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SUPREME COURT OF THE UNITED STATES.

No. 11, Original.—October Term, 1944.

The State of Georgia, Complainant, *vs.* The Pennsylvania Railroad Company, et al., Defendants.	Motion for Leave to File Amended Bill of Complaint.

[March 26, 1945.]

Mr. Justice Douglas delivered the opinion of the Court.

The State of Georgia by this motion for leave to file a bill of complaint[1] seeks to invoke the original jurisdiction of this Court under Art. III, Sec. 2 of the Constitution. See Judicial Code § 233, 28 U. S. C. § 341. The defendants are some twenty railroad companies. On November 6, 1944, we issued a rule to show cause why Georgia should not be permitted to file its bill of complaint. Returns to the rule have been made and oral argument had.

Georgia sues in four capacities only two of which we need mention: (1) in her capacity as a quasi-sovereign or as agent and protector of her people against a continuing wrong done to them; and (2) in her capacity as a proprietor to redress wrongs suffered by the State as the owner of a railroad and as the owner and operator of various institutions of the State.

The essence of the complaint is a charge of a conspiracy among the defendants in restraint of trade and commerce among the States. It alleges that they have fixed arbitrary and noncompetitive rates and charges for transportation of freight by railroad to and from Georgia so as to prefer the ports of other States over the ports of Georgia. It charges that some sixty rate bureaus, committees, conferences, associations and other private rate-fixing agencies have been utilized by defendants to fix these rates; that no road can change joint through rates without the approval of these private agencies; that this private rate-fixing machinery which is not sanctioned by the Interstate Commerce Act and which is prohibited by the anti-trust Acts has put the effective control of

[1] The original bill of complaint dated June 12, 1944 was followed by an amended bill of complaint dated September 15, 1944. Our references throughout are to the amended bill.

rates to and from Georgia in the hands of the defendants. The complaint alleges that these practices in purpose and effect give manufacturers, sellers and other shippers in the North an advantage over manufacturers, shippers and others in Georgia. It alleges that the rates so fixed are approximately 39 per cent higher than the rates and charges for transportation of like commodities for like distances between points in the North. It alleges that the defendants who have lines wholly or principally in the South are generally dominated and coerced by the defendants who have northern roads and therefore that even when the southern defendants desire, they cannot publish joint through rates between Georgia and the North when the northern carriers refuse to join in such rates.

It is alleged that the rates as a result of the conspiracy are so fixed as

> "(a) to deny to many of Georgia's products equal access with those of other States to the national market;
>
> (b) to limit in a general way the Georgia economy to staple agricultural products, to restrict and curtail opportunity in manufacturing, shipping and commerce, and to prevent the full and complete utilization of the natural wealth of the State;
>
> (c) to frustrate and counteract the measures taken by the State to promote a well-rounded agricultural program, encourage manufacture and shipping, provide full employment, and promote the general progress and welfare of its people; and
>
> (d) to hold the Georgia economy in a state of arrested development."

The complaint alleges that the defendants are not citizens of Georgia; that Georgia is without remedy in her own courts, as the defendants are outside her jurisdiction; that she has no administrative remedy, the Interstate Commerce Commission having no power to afford relief against such a conspiracy; that the issues presented constitute a justiciable question.

The prayer is for damages and for injunctive relief.

We will return later to the cause of action which Georgia seeks to allege. It is sufficient at this point to say that for purposes of this motion for leave to file we construe the allegation that defendants have conspired to fix the rates so as to "prefer" the ports of other States over the ports of Georgia as a charge that

defendants have conspired to fix rates so as to discriminate against Georgia. And we construe the allegation that the southern defendants are dominated and coerced by the northern roads and cannot publish joint through rates when the northern roads refuse to join as a charge that the northern roads use coercion on the southern roads in the fixing of joint through rates.

Defendants in their returns pray that the motion for leave to file be denied on three grounds: (1) that the complaint presents no justiciable controversy; (2) that the complaint fails to state a cause of action; and (3) that two of the defendants are citizens of Georgia. Leave to file should of course be denied if it is plain that no relief may be granted in the exercise of the original jurisdiction of this Court. See *Alabama* v. *Arizona*, 291 U. S. 286, 291-292; *Arizona* v. *California*, 298 U. S. 558, 572.

Justiciable Controversy. It is said that the bill does not set forth a justiciable controversy within the rule of *Massachusetts* v. *Mellon*, 262 U. S. 447, and *Florida* v. *Mellon*, 273 U. S. 12. We take the other view, for we are of the opinion that Georgia as *parens patriae* and as proprietor of various institutions asserts a claim within judicial cognizance. The complaint of Georgia in those respects is not of a political or governmental character. There is involved no question of distribution of powers between the State and the national government as in *Massachusetts* v. *Mellon* and in *Florida* v. *Mellon, supra.* And, as we shall develop more fully when we turn to a consideration of the assertion that no cause of action has been stated, we are not asked to resolve a dispute which has been withdrawn from the judiciary or which by the charter of our government has been reposed in departments other than the judiciary. Cf. *Coleman* v. *Miller*, 307 U. S. 433, 456, 460. The complaint alleges a conspiracy to restrain trade and commerce through the fixing of rates. The history of restraints of trade makes it plain that these problems present judicial questions with which courts have long dealt.[2]

It is of course true that Georgia does not have a right to invoke the original jurisdiction of the Court merely because there may be involved a judicial question. It is not enough that a State is plaintiff. The original jurisdiction is confined to civil suits where damage has been inflicted or is threatened, not to the enforce-

[2] See McLaughlin, Cases on the Federal Anti-Trust Laws (1933), pp. 7-42; Thornton, Combinations in Restraint of Trade (1928), chs. II, III.

ment of penal statutes of a State. *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 297-300. And though the suit is civil, leave to file will be denied where it appears that the suit brought in the name of the State is in reality for the benefit of particular individuals. *Oklahoma* v. *Atchison, T. & S. F. Ry. Co.*, 220 U. S. 277; *Oklahoma* v. *Cook*, 304 U. S. 387; *Jones* v. *Bowles*, 322 U. S. 707. Moreover, *Massachusetts* v. *Mellon* and *Florida* v. *Mellon, supra*, make plain that the United States not the State represents the citizens as *parens patriae* in their relations to the federal government.

The present controversy, however, does not fall within any of those categories. This is a civil not a criminal proceeding. Nor is this a situation where the United States rather than Georgia stands as *parens patriae* to the citizens of Georgia. This is not a suit like those in *Massachusetts* v. *Mellon*, and *Florida* v. *Mellon*, *supra*, where a State sought to protect her citizens from the operation of federal statutes. Here Georgia asserts rights based on the anti-trust laws. The fact that the United States may bring criminal prosecutions or suits for injunctions under those laws does not mean that Georgia may not maintain the present suit. As we have seen Georgia sues as a proprietor to redress wrongs suffered by it as the owner of a railroad and as the owner and operator of various public institutions. Georgia, suing for her own injuries, is a "person" within the meaning of § 16 of the Clayton Act; she is authorized to maintain suits to restrain violations of the anti-trust laws or to recover damages by reason thereof. *Georgia* v. *Evans*, 316 U. S. 159. But Georgia is not confined to suits designed to protect only her proprietary interests. The rights which Georgia asserts, *parens patriae*, are those arising from an alleged conspiracy of private persons whose price-fixing scheme, it is said, has injured the economy of Georgia. Those rights are of course based on federal laws. The enforcement of the criminal sanctions of these acts has been entrusted exclusively to the federal government. See *Georgia* v. *Evans*, *supra*, p. 162. But when it came to other sanctions Congress followed a different course and authorized civil suits not only by the United States but by other persons as well. And we find no indication that, when Congress fashioned those civil remedies, it restricted the States to suits to protect their proprietary interests. Suits by a State, *parens patriae*, have long been recognized. There

is no apparent reason why those suits should be excluded from the purview of the anti-trust acts.

In determining whether a State may invoke our original jurisdiction in a dispute which is justiciable (*Oklahoma* v. *Cook, supra,* p. 393) the interests of the State are not confined to those which are proprietary; they embrace the so-called "quasi-sovereign" interests which in the words of *Georgia* v. *Tennessee Copper Co.,* 206 U. S. 230, 237, are "independent of and behind the titles of its citizens, in all the earth and air within its domain." In that case this Court enjoined manufacturing companies from discharging noxious gas from their works in Tennessee over Georgia's territory. It was pointed out that "It is a fair and reasonable demand on the part of a sovereign that the air over its territory should not be polluted on a great scale by sulphurous acid gas, that the forests on its mountains, be they better or worse, and whatever domestic destruction they have suffered, should not be further destroyed or threatened by the act of persons beyond its control, that the crops and orchards on its hills should not be endangered from the same source." 206 U. S. p. 238. That case followed *Missouri* v. *Illinois,* 180 U. S. 208, where Missouri was granted leave to file a bill seeking to enjoin the discharge of sewage into the Mississippi.[3] The Court observed that "if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them." 180 U. S. p. 241. And see *New York* v. *New Jersey,* 256 U. S. 296, 301-302. In *Kansas* v. *Colorado,* 206 U. S. 46, Kansas was allowed to sue to restrain the diversion of water from the Arkansas River, an interstate stream. The Court in upholding the right of Kansas to maintain the suit stated: "It is not acting directly and solely for the benefit of any individual citizen to protect his riparian rights. Beyond its property rights it has an interest as a State in this large tract of land bordering on the Arkansas River. Its prosperity affects the general welfare of the State. The controversy rises, therefore, above a mere question of local private right and involves a matter of state interest, and must be considered from that standpoint." 206 U. S. p. 99. And see *Colorado* v. *Kansas,* 320 U. S. 383; *North Dakota* v. *Minnesota,* 263 U. S. 365. In *Pennsylvania* v. *West Virginia,* 262 U. S. 553,

[3] And see Missouri v. Illinois, 200 U. S. 496; Wisconsin v. Illinois, 278 U. S. 367.

Pennsylvania and Ohio were allowed to maintain suits which sought to enjoin West Virginia from interfering with the flow of natural gas from West Virginia to the other states. The Court said:

"The attitude of the complainant States is not that of mere volunteers attempting to vindicate the freedom of interstate commerce or to redress purely private grievances. Each sues to protect a two-fold interest—one as the proprietor of various public institutions and schools whose supply of gas will be largely curtailed or cut off by the threatened interference with the interstate current, and the other as the representative of the consuming public whose supply will be similarly affected. Both interests are substantial and both are threatened with serious injury.

Each State uses large amounts of the gas in her several institutions and schools,—the greater part in the discharge of duties which are relatively imperative. A break or cessation in the supply will embarrass her greatly in the discharge of those duties and expose thousands of dependents and school children to serious discomfort, if not more. To substitute another form of fuel will involve very large public expenditures.

"The private consumers in each State not only include most of the inhabitants of many urban communities but constitute a substantial portion of the State's population. Their health, comfort and welfare are seriously jeopardized by the threatened withdrawal of the gas from the interstate stream. This is a matter of grave public concern in which the State, as the representative of the public, has an interest apart from that of the individuals affected. It is not merely a remote or ethical interest but one which is immediate and recognized by law." 262 U. S. pp. 591-592.

It seems to us clear that under the authority of these cases Georgia may maintain this suit as *parens patriae* acting on behalf of her citizens though here, as in *Georgia* v. *Tennessee Copper Co., supra,* p. 237, we treat the injury to the State as proprietor merely as a "makeweight". The original jurisdiction of this Court is one of the mighty instruments which the framers of the Constitution provided so that adequate machinery might be available for the peaceful settlement of disputes between States and between a State and citizens of another State. See *Missouri* v. *Illinois, supra,* pp. 219-224; *Virginia* v. *West Virginia,* 246 U. S. 565, 599. Trade barriers, recriminations, intense commercial rivalries had plagued the colonies.[4] The traditional methods avail-

[4] See 1 Beveridge, The Life of John Marshall (1916), pp. 310-311; Bancroft, History of the Formation of the Constitution (1885), pp. 27, 130, 183, 187, 454.

able to a sovereign for the settlement of such disputes were diplomacy and war. Suit in this Court was provided as an alternative. *Missouri* v. *Illinois, supra,* p. 241; *Georgia* v. *Tennessee Copper Co., supra,* p. 237.

If the allegations of the bill are taken as true, the economy of Georgia and the welfare of her citizens have seriously suffered as the result of this alleged conspiracy. Discriminatory rates are but one form of trade barriers. They may cause a blight no less serious than the spread of noxious gas over the land or the deposit of sewage in the streams. They may affect the prosperity and welfare of a State as profoundly as any diversion of waters from the rivers. They may stifle, impede, or cripple old industries and prevent the establishment of new ones. They may arrest the development of a State or put it at a decided disadvantage in competitive markets. Such a charge at least equals in gravity the one which Pennsylvania and Ohio had with West Virginia over the curtailment of the flow of natural gas from the West Virginia fields. They are substitute fuels to which the economy of a State might be adjusted. But discriminatory rates fastened on a region have a more permanent and insidious quality. Georgia as a representative of the public is complaining of a wrong, which if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States. These are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected. Georgia's interest is not remote; it is immediate. If we denied Georgia as *parens patriae* the right to invoke the original jurisdiction of the Court in a matter of that gravity, we would whittle the concept of justiciability down to the stature of minor or conventional controveries. There is no warrant for such a restriction.

Oklahoma v. *Atchison, T. & S. F. Ry. Co., supra,* is not opposed to this view. In that case, the defendant railroad company had obtained a grant from Congress to locate and maintain a railway line through the Indian territory out of which the State of Oklahoma was later formed. The federal act provided certain maximum transportation rates which the company might charge. Oklahoma sued to cancel the grant, to have the property granted decreed to be in the State of Oklahoma as *cestui que trustent,* to enjoin the defendant from operating a railroad in the States, and

to enjoin *pendente lite* the exaction of greater rates than the maximum rates specified. The Court construed the Act of Congress as subjecting the rates to federal control until the territory became a part of a State, at which time the rates became subject to state control. The Court held that our original jurisdiction could not be invoked by a State merely because its citizens were injured. We adhere to that decision. It does not control the present one. This is no attempt to utilize our original jurisdiction in substitution for the established methods of enforcing local law. This is not a suit in which a State is a mere nominal plaintiff, individual shippers being the real complainants. This is a suit in which Georgia asserts claims arising out of federal laws and the gravamen of which runs far beyond the claim of damage to individual shippers.

Since the claim which Georgia asserts as *parens patriae* as well as proprietor meets the standards of justiciability and since Georgia is a "person" entitled to enforce the civil sanctions of the anti-trust laws, the reasons which have been advanced for denying Georgia the opportunity to present her cause of action to this Court fail.

Cause of Action. It is argued that the complaint fails to state a cause of action. (1) It is pointed out that under the principle of the *Abilene* case no action for damages on the basis of unjust, unreasonable, or discriminatory railroad rates may be maintained without prior resort to the Interstate Commerce Commission. *Texas & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285. (2) It is said that an injunction may not be granted to restrain rates alleged to be unreasonable or discriminatory where there has been no prior determination of the matter by the Commission and that the only way a State or any other person may obtain a judicial determination of the legality of a rate is by review of the Commission's order. *Baltimore & Ohio R. Co.* v. *Pitcairn Coal Co.*, 215 U. S. 481; *North Dakota* v. *Chicago & N. W. Ry. Co.*, 257 U. S. 485; *Texas* v. *Interstate Commerce Commission*, 258 U. S. 158. (3) It is said that damages under the anti-trust laws may not be recovered against railroad carriers though the rates approved by the Commission were fixed pursuant to a conspiracy. *Keogh* v. *Chicago & N. W. Ry. Co.*, 260 U. S. 156. (4) It is said that persons other than the United States are barred from enjoining violations of the anti-trust laws by virtue of § 16 of the Clay-

ton Act. 38 Stat. 737, 15 U. S. C. § 26. See *Central Transfer Co.* v. *Terminal R. Assoc.*, 288 U. S. 469, 473-475; *Terminal Warehouse Co.* v. *Pennsylvania R. Co.*, 297 U. S. 500, 513. (5) It is argued that Georgia cannot maintain an action on common law principles based upon a conspiracy among carriers to fix rates.

We think it is clear from the *Keogh* case alone that Georgia may not recover damages even if the conspiracy alleged were shown to exist. That was a suit for damages under § 7 of the Sherman Act. 26 Stat. 210. The Court recognized that although the rates fixed had been found reasonable and nondiscriminatory by the Commission, the United States was not barred from enforcing the remedies of the Sherman Act. 260 U. S. pp. 161-162. It held, however, that for purposes of a suit for damages a rate was not necessarily illegal because it was the result of a conspiracy in restraint of trade. The legal rights of a shipper against a carrier in respect to a rate are to be measured by the published tariff. That rate until suspended or set aside was for all purposes the legal rate as between shipper and carrier and may not be varied or enlarged either by the contract or tort of the carrier. And it added: "This stringent rule prevails, because otherwise the paramount purpose of Congress—prevention of unjust discrimination—might be defeated. If a shipper could recover under § 7 of the Anti-Trust Act for damages resulting from the exaction of a rate higher than that which would otherwise have prevailed, the amount recovered might, like a rebate, operate to give him a preference over his trade competitors." 260 U. S. p. 163. The reasoning and precedent of that case apply with full force here. But it does not dispose of the main prayer of the bill, stressed at the argument, which asks for relief by way of injunction.

It is clear that a suit could not be maintained here to review, annul, or set aside an order of the Interstate Commerce Commission. Congress has prescribed the method for obtaining that relief. It is exclusive of all other remedies, including a suit by a State in this Court. *North Dakota* v. *Chicago & N. W. Ry. Co.*, *supra*; *Texas* v. *Interstate Commerce Commission*, *supra*. The same result obtains where the basis for attacking an order of the Commission is a violation of the anti-trust laws, save in the case where the United States is the complainant. For § 16 of the Clayton Act which gives relief by way of injunction against threatened loss or damage through violation of the anti-trust laws pro-

vides that no one except the United States shall be entitled to bring such suits against common carriers subject to the Interstate Commerce Act "in respect of any matter subject to the regulation, supervision, or other jurisdiction" of the Commission. *Central Transfer Co.* v. *Terminal R. Assoc., supra,* indicates that if Georgia in the present proceeding sought to set aside the rates of the defendants, leave to file would have to be denied. In that case the Commission had approved certain rate schedules which entailed abandoning certain "off-track" stations and the employment by the carriers of a single transfer company to do interstation hauling. The carriers proceeded to make an agreement to carry out the program which had been submitted to the Commission and which was later approved by it. Suit was brought by a private company to enjoin performance of the contract on the ground that it created a monopoly in violation of the anti-trust laws. The Court held that the suit was barred by § 16 of the Clayton Act. The Court pointed out that the purpose of § 16 was "to preclude any interference by injunction with any business or transactions of interstate carriers of sufficient public significance and importance to be within the jurisdiction of the Commission, except when the suit is brought by the Government itself." 288 U. S. p. 475. It added (p. 476): "True, a contract may precede and have existence apart from the several acts required to perform it, and conceivably all of those acts might be done if no contract or agreement to perform them had ever existed. But when they are done in performance of an agreement, there is no way by which the agreement itself can be assailed by injunction except by restraining acts done in performance of it. That, in this case, the statute forbids, not because the contract is within the jurisdiction of the Interstate Commerce Commission, but because the acts done in performance of it, which must necessarily be enjoined if any relief is given, are matters subject to the jurisdiction of the Commission." The policy behind these restrictions placed on suitors by the Congress was aptly stated in *Terminal Warehouse Co.* v. *Pennsylvania R. Co., supra,* p. 513, as follows: "If a sufferer from the discriminatory acts of carriers by rail or by water may sue for an injunction under the Clayton Act without resort in the first instance to the regulatory commission, the unity of the system of regulation breaks down beyond repair." We adhere

to these decisions. But we do not believe they or the principles for which they stand are a barrier to the maintenance of this suit by Georgia.

The relief which Georgia seeks is not a matter subject to the jurisdiction of the Commission. Georgia in this proceeding is not seeking an injunction against the continuance of any tariff; nor does she seek to have any tariff provision cancelled. She merely asks that the alleged rate-fixing combination and conspiracy among the defendant-carriers be enjoined. As we shall see, that is a matter over which the Commission has no jurisdiction. And an injunction designed to put an end to the conspiracy need not enjoin operation under established rates as would have been the case had an injunction issued in *Central Transfer Co.* v. *Terminal R. Assoc., supra.*

These carriers are subject to the anti-trust laws. *United States* v. *Southern Pacific Co.*, 259 U. S. 214. Conspiracies among carriers to fix rates were included in the broad sweep of the Sherman Act. *United States* v. *Trans-Missouri Freight Assoc.*, 166 U. S. 290; *United States* v. *Joint Traffic Assoc.*, 171 U. S. 505. Congress by § 11 of the Clayton Act entrusted the Commission with authority to enforce compliance with certain of its provisions "where applicable to common carriers" under the Commission's jurisdiction.[5] It has the power to lift the ban of the anti-trust laws in favor of carriers who merge or consolidate (*New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 25-26) and the duty to give weight to the anti-trust policy of the nation before approving mergers and consolidations. *McLean Trucking Co.* v. *United States*, 321 U. S. 67. But Congress has not given the Commission comparable authority to remove rate-fixing combinations from the prohibitions contained in the anti-trust laws. It has not placed these combinations under the control and supervision of the Commission. Nor has it empowered the Commission to proceed against such combinations and through cease and desist orders or otherwise to put an end to their activities. Regulated industries are not *per se* exempt from the Sherman Act.

[5] These provisions are those relating to discriminations in price, services, or facilities (§ 2); certain sales of goods, wares, merchandise and the like (§ 3); acquisition by one corporation of the stock of another (§ 7); interlocking directorates and officers (§ 8). See 15 U. S. C. §§ 13, 14, 18, and 19. The enforcement machinery is composed of cease and desist orders enforceable in the courts. 15 U. S. C. § 21.

United States v. *Borden Co.*, 308 U. S. 188, 198 *et seq.* It is true that the Commission's regulation of carriers has greatly expanded since the Sherman Act. See *Arizona Grocery Co.* v. *Atchison, T. & S. F. Ry. Co.*, 284 U. S. 370, 385-386. But it is elementary that repeals by implication are not favored. Only a clear repugnancy between the old law and the new results in the former giving way and then only *pro tanto* to the extent of the repugnancy. *United States* v. *Borden*, *supra*, pp. 198, 199. None of the powers acquired by the Commission since the enactment of the Sherman Act relates to the regulation of rate-fixing combinations. Twice Congress has been tendered proposals to legalize rate-fixing combinations.[6] But it has not adopted them. In view of this history we can only conclude that they have no immunity from the anti-trust laws.

It is pointed out, however, that under § 1(4) of the Interstate Commerce Act (54 Stat. 900, 49 U. S. C. § 1(4)) it is "the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto." And it is noted that agreement among carriers is provided in the establishment of joint rates. § 6. That is true. But it would be a perversion of those sections to hold that they legalize a rate-fixing combination of the character alleged to exist here. The collaboration contemplated in the fixing of through and joint rates is of a restrictive nature. We do not stop at this stage of the proceedings to delineate the legitimate area in which that collaboration may operate. In the *Keogh* case (260 U. S. 156) the suit was one for damages under the Sherman Act. The charge was that the defendant carriers had formed a rate bureau or committee to secure agreement in respect to freight rates among the constituent railroad companies which would otherwise be competing carriers. As we have seen, the Court held that damages could not be recovered. But Mr. Justice

[6] See (1) 51 Cong. Record, 63rd Cong., 2d Sess., pp. 9582, 9583; (2) S. 942, 78th Cong., 1st Sess.; H. R. 2720, 78th Cong., 1st Sess. These latter proposals were designed (1) to make lawful the fixing of rates by carriers through rate bureaus, conferences, or associations; and (2) to put those group activities under the control of the Commission. The history and activities of rate bureaus are extensively reviewed in Hearings, Senate Committee on Interstate Commerce on S. 942, Regulation of Rate Bureaus, 78th Cong., 1st Sess.

Brandeis speaking for a unanimous Court stated that a conspiracy to fix rates might be illegal though the rates fixed were reasonable and non-discriminatory. He said (260 U. S. pp. 161-162): "All the rates fixed were reasonable and nondiscriminatory. That was settled by the proceedings before the Commission. . . . But under the Anti-Trust Act, a combination of carriers to fix reasonable and non-discriminatory rates may be illegal; and if so, the Government may have redress by criminal proceedings under § 3, by injunction under § 4, and by forfeiture under § 6. That was settled by *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, and *United States* v. *Joint Traffic Association*, 171 U. S. 505. The fact that these rates had been approved by the Commission would not, it seems, bar proceedings by the Government." The *Trans-Missouri Freight Assoc.* case and the *Joint Traffic Assoc.* case have been followed in other fields. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, and the cases which preceded it indicate the extent of the ban on price-fixing under the Sherman Act. But we need not at this juncture determine the full extent to which that principle is applicable in the fixing of joint through rates. It is sufficient here to note that we find no warrant in the Interstate Commerce Act and the Sherman Act for saying that the authority to fix joint through rates clothes with legality a conspiracy to discriminate against a State or a region, to use coercion in the fixing of rates, or to put in the hands of a combination of carriers a veto power over rates proposed by a single carrier. The type of regulation which Congress chose did not eliminate the emphasis on competition and individual freedom of action in rate making. 1 Sharfman, The Interstate Commerce Commission (1931), p. 81. The Act was designed to preserve private initiative in rate-making as indicated by the duty of each common carrier to initiate its own rates. *Arizona Grocery Co.* v. *Atchison, T. & S. F. Ry. Co., supra.* If a combination of the character described in this bill of complaint is immune from suit that freedom of action disappears. The coercive and collusive influences of group action take its place.[7]

[7] We have considered the argument that Certificate No. 44, issued March 20, 1943 under § 12 of the Act of June 11, 1942 (56 Stat. 357) by the Chairman of the War Production Board (8 Fed. Reg. 3804) protects this alleged combination from the charges contained in the bill. That certificate approves joint action by common carriers through rate bureaus and the like in the initiation and establishment of rates. We do not stop to analyze it beyond

A monopoly power is created under the aegis of private parties without Congressional sanction and without governmental supervision or control.

These considerations emphasize the irrelevancy to the present problem of the fact that the Commission has authority to remove discriminatory rates of the character alleged to exist here. Under § 3(1) of the Act rates are declared unlawful which give "any undue or unreasonable preference or advantage" to any port, region, district, territory and the like. And the Commission has taken some action in that regard. See *Alabama* v. *New York C. R. Co.*, 235 I. C. C. 255; 237 I. C. C. 515; *Live Stock to and from the South*, 253 I. C. C. 241. The present bill does not seek to have the Court act in the place of the Commission. It seeks to remove from the field of rate-making the influences of a combination which exceed the limits of the collaboration authorized for the fixing of joint through rates. It seeks to put an end to discriminatory and coercive practices. The aim is to make it possible for individual carriers to perform their duty under the Act, so that whatever tariffs may be continued in effect or superseded by new ones may be tariffs which are free from the restrictive, discriminatory, and coercive influences of the combination. That is not to undercut or impair the primary jurisdiction of the Commission over rates. It is to free the rate-making function of the influences of a conspiracy over which the Commission has no authority but which if proven to exist can only hinder the Commission in the tasks with which it is confronted.

What we have said disposes for the most part of the argument that recognized principles of equity prevent us from granting the relief which is asked. Sec. 16 of the Clayton Act provides for relief by injunction "when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity." Those requirements are sufficiently satisfied to justify a filing of this bill. It must be remembered that this is a suit to dissolve an illegal combination or to confine it to the legitimate area of collaboration. That relief cannot be obtained from the Commission for it has no supervisory authority over the combination. It is

observing that in no respect would it be a bar to the present action. It does not purport to be retroactive. It does not sanction the use of coercion. It does not authorize any combination to discriminate against a region in the establishment of rates. Moreover, legal means may be employed for an illegal end.

true that the injury to Georgia is not in the existence of the combination *per se* but in the rates which are fixed by the combination. The fact that the rates which have been fixed may or may not be held unlawful by the Commission is immaterial to the issue before us. The *Keogh* case indicates that even a combination to fix reasonable and non-discriminatory rates may be illegal. 260 U. S. p. 161. The reason is that the Interstate Commerce Act does not provide remedies for the correction of all the abuses of rate-making which might constitute violations of the anti-trust laws. Thus a "zone of reasonableness exists between maxima and minima within which a carrier is ordinarily free to adjust its charges for itself." *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499, 506. Within that zone the Commission lacks power to grant relief even though the rates are raised to the maxima by a conspiracy among carriers who employ unlawful tactics. If the rate-making function is freed from the unlawful restraints of the alleged conspiracy, the rates of the future will then be fixed in the manner envisioned by Congress when it enacted this legislation. Damage must be presumed to flow from a conspiracy to manipulate rates within that zone.

Moreover, the relief sought from this Court is not an uprooting of established rates. We are not asked for a decree which would be an idle gesture. We are not asked to enjoin what the Commission might later approve or condone. We are not asked to trench on the domain of the Commission; nor need any decree which may be ultimately entered in this cause have that effect. Georgia alleges, "No administrative proceeding directed against a particular schedule of rates would afford relief to the State of Georgia so long as the defendants remained free to promulgate rates by collusive agreement. Until the conspiracy is ended, the corrosion of new schedules, established by the collusive power of the defendant carriers acting in concert, would frustrate any action sought to be taken by administrative process to redress the grievances from which the State of Georgia suffers." Rate-making is a continuous process. Georgia is seeking a decree which will prevent in the future the kind of harmful conduct which has occurred in the past. Take the case of coercion. If it is shown that the alleged combination exists and uses coercion in the fixing of joint through rates, only an injunction aimed at future conduct of that character can give adequate relief. Indeed, so long as the collaboration which exists exceeds lawful limits and con-

tinues in operation, the only effective remedy lies in dissolving the combination or in confining it within legitimate boundaries. Any decree which is entered would look to the future and would free tomorrow's rate-making from the coercive and collusive influences alleged to exist. It cannot of course be determined in advance what rates may be lawfully established. But coercion can be enjoined. And so can a combination which has as its purpose an invidious discrimination against a region or locality. Dissolution of illegal combinations or a restriction of their conduct to lawful channels is a conventional form of relief accorded in anti-trust suits. No more is envisaged here. If the alleged combination is shown to exist, the decree which can be entered will be no idle or futile gesture. It will restore that degree of competition envisaged by Congress when it enacted the Interstate Commerce Act. It will eliminate from rate-making the collusive practices which the anti-trust laws condemn and which are not sanctioned by the Interstate Commerce Act. It will supply an effective remedy without which there can be only an endless effort to rectify the continuous injury inflicted by the unlawful combination. The threatened injury is clear. The damage alleged is sufficient to satisfy the preliminary requirements of this motion to file. There is no administrative control over the combination. And no adequate or effective remedy other than this suit is suggested which Georgia can employ to eliminate from rate-making the influences of the unlawful conspiracy alleged to exist here.

As we have said, we construe the bill to charge a conspiracy among defendants to use coercion in the fixing of ~~joint through~~ rates and to discriminate against Georgia in the rates which are fixed. We hold that under that construction of the bill a cause of action under the anti-trust laws is alleged.[3] We intimate no opinion whether the bill might be construed to charge more than that or whether a rate-fixing combination would be legal under the Interstate Commerce Act and the Sherman Act but for the features of discrimination and coercion charged here. We are dealing with the case only in a preliminary manner. Cf. *Missouri* v. *Illinois*, 200 U. S. 496, 517, 518. The complaint may have to be amplified and clarified as respects the coercion and discrimination charged, the damage suffered, or otherwise. We do not test

[3] We therefore do not reach the question whether an action based on common law principles could be maintained.

it against the various types of motions and pleadings which may be filed. We construe it with that liberality accorded the complaint of a sovereign State as presenting a substantial question with sufficient clarity and specificity as to require a joinder of issues.

Alleged Misjoinder of Parties Defendant. Two of the defendant-corporations claim to be citizens of Georgia. Georgia asserts they are not. That issue is an involved one. Georgia may not of course invoke the original jurisdiction of the Court in a suit against one of her citizens. If either of the defendants who assert ~~their defense are citizens of Georgia and are necessary parties~~, leave to file would have to be denied. *Pennsylvania* v. *Quicksilver Mining Co.*, 10 Wall. 553; *California* v. *Southern Pac. Co.*, 157 U. S. 229; *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199; *Louisiana* v. *Cummins*, 314 U. S. 577. We do not, however, have to decide at this stage of the proceedings whether the corporations in question are citizens of Georgia within the meaning of Art. III, Sec. 2 of the Constitution. They are not indispensable parties. In a suit to enjoin a conspiracy not all the conspirators are necessary parties defendant.[9] It is averred and not challenged that the other defendants are citizens of other States. The citizenship of the two defendants in question may be challenged by a motion to strike. *Louisiana* v. *Cummins*, 314 U. S. 580. But if they are stricken, the Court would not lose original jurisdiction over the controversy between Georgia and the other defendants.

this defense is a citizen of Georgia and is a necessary party,

Exercise of Original Jurisdiction. It does not necessarily follow that this Court must exercise its original jurisdiction. It has at times been held that this Court is not the appropriate tribunal in which to maintain suits brought by a State.

By Clause 1 of § 2 of Article III of the Constitution, the judicial power of the United States extends "to all Cases, in Law and Equity, arising under . . . the Laws of the United States" and "to Controversies . . . between a State and Citizens of another State."[10] Clause 2 of § 2 of Article III confers on this Court jurisdiction of those cases "in which a State shall be Party".

[9] See Waterman *v.* Canal-Louisiana Bank Co., 215 U. S. 33, 49; United Shoe Mach. Co. *v.* United States, 258 U. S. 451, 456; Hopkins *v.* Oxley Stave Co., 83 Fed. 912, 915-916; Rocky Mountain Bell Tel. Co. v. Montana Federation of Labor, 156 Fed. 809, 811-812. Cf. United States *v.* Socony-Vacuum Oil Co., 310 U. S. 150, 247.

[10] By reason of the Eleventh Amendment the judicial power of the United States does not extend to suits brought against a state by a citizen of another state.

But Clause 2 of § 2 merely distributes the jurisdiction conferred by Clause 1 of § 2. *Louisiana* v. *Texas*, 176 U. S. 1, 16; *Massachusetts* v. *Missouri*, 308 U. S. 1, 19. Clause 2 does not grant exclusive jurisdiction to this Court in the cases enumerated by it. *Ames* v. *Kansas*, 111 U. S. 449, 469; *Plaquemines Fruit Co.* v. *Henderson*, 170 U. S. 511. And it has been held that the exercise of that jurisdiction is not mandatory in every case. *North Dakota* v. *Chicago & Northwestern Ry., supra*; *Georgia* v. *Chattanooga*, 264 U. S. 473, 483; *Oklahoma* v. *Cook, supra*, p. 396; *Massachusetts* v. *Missouri, supra*. The Court in its discretion has withheld the exercise of its jurisdiction where there has been no want of another suitable forum to which the cause may be remitted in the interests of convenience, efficiency and justice. *Georgia* v. *Chattanooga, supra*; *Massachusetts* v. *Missouri, supra*.

There is some suggestion that the issues tendered by the bill of complaint present questions which a district court is quite competent to decide. It is pointed out that the remedy is one normally pursued in the district courts whose facilities and prescribed judicial duties are better adapted to the extended trial of issues of fact than are those of this Court. And it is said that no reason appears why the present suit may not conveniently proceed in the district court of the proper venue or why the convenience of the parties and witnesses, as well as of the courts, would be better served by a trial before a master appointed by this Court than by a trial in a district court with the customary appellate review.[11] The suggestion is that we deny the motion for leave to file, without prejudice to the maintenance of the suit in an appropriate district court. See *Massachusetts* v. *Missouri, supra*, pp. 17-18.

There is, however, a reason why we should not follow that procedure here though in other respects we assume it would be wholly appropriate. Sec. 16 of the Clayton Act (15 U. S. C. § 26), with the exceptions already noted, provides that "any person . . . shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws." Sec. 12 of the Clayton Act (15 U. S. C. § 22) provides that "Any suit, action, or proceeding under the antitrust laws against a

[11] In a proper case appellate review may be had directly in this Court by certiorari before judgment in the Circuit Court of Appeals. Judicial Code § 240(a), 28 U. S. C. § 347(a).

corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found."

From these provisions it is apparent that Georgia might sue the defendants only in the judicial district where they are inhabitants or where they may be found or transact business. The bill of complaint, however, alleges and (with the exception of the two defendants already mentioned) it is not denied that "the parties defendant are not citizens of Georgia, or within the jurisdiction of its courts." If that allegation is taken as true, it is apparent that Georgia could not find all of the defendants in one of the judicial districts of Georgia so as to maintain a suit of this character against all of them in a district court in Georgia. Certainly we have no basis for assuming that all of the so-called northern roads, incorporated in such States of Pennsylvania, Maryland, Indiana, Ohio, New York and Illinois, are doing business in Georgia. It is said that most of the defendants can be found in Georgia, in the District of Columbia, or in other districts. But no such facts appear in the record before us. And we cannot take judicial notice of the district or districts wherein all of the defendants are "found" or "transact business". We would not be warranted in depriving Georgia of the original jurisdiction of this Court merely because each of the defendants could be found in some judicial district. Unless it were clear that all of them could be found in some convenient forum we could not say that Georgia had a "proper and adequate remedy" apart from the original jurisdiction of this Court. *Massachusetts* v. *Missouri*, *supra*, p. 19. No such showing has been made. Once a state makes out a case which comes within our original jurisdiction, its right to come here is established. There is no requirement in the Constitution that it go further and show that no other forum is available to it.

It is true that § 5 of the Sherman Act empowers the court before whom proceedings under § 4 are pending to bring in parties who reside outside the district in which the court is held.[12]

[12] Sec. 4 reads:

"The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1-7 and 15 of this title; and it shall be the duty of the several district attorneys of the United States,

That procedure is available in civil suits brought by the United States. *Standard Oil Co.* v. *United States*, 221 U. S. 1, 46. But since § 4 is limited to suits brought by the United States, § 5 is similarly confined. See *Greer, Mills & Co.* v. *Stoller*, 77 Fed. 1; *Hansen Packing Co.* v. *Armour & Co.*, 16 F. Supp. 784, 787. Apart from specific exceptions created by Congress the jurisdiction of the district courts is territorial. As stated in *Robertson* v. *Railroad Labor Board*, 268 U. S. 619, 622-623:

"In a civil suit *in personam* jurisdiction over the defendant, as distinguished from venue, implies, among other things, either voluntary appearance by him or service of process upon him at a place where the officer serving it has authority to execute a writ of summons. Under the general provisions of law, a United States district court cannot issue process beyond the limits of the district, *Harkness* v. *Hyde*, 98 U. S. 476; *Ex parte Graham*, 3 Wash. 456; and a defendant in a civil suit can be subjected to its jurisdiction *in personam* only by service within the district. *Toland* v. *Sprague*, 12 Pet. 300, 330. Such was the general rule established by the Judiciary Act of September 24, 1789, c. 20, § 11, 1 Stat. 73, 79, in accordance with the practice at the common law. *Piquet* v. *Swan*, 5 Mason 35, 39 *et seq.* And such has been the general rule ever since. *Munter* v. *Weil Corset Co.*, 261 U. S. 276, 279."

It follows that we should not in the exercise of our discretion remit Georgia to the federal district courts for relief against the injuries of which she complains.

The motion for leave to file the amended bill of complaint is granted.

It is so ordered.

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in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

Sec. 5 reads:

"Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof."

SUPREME COURT OF THE UNITED STATES.

No. 11, Original.—OCTOBER TERM, 1944.

The State of Georgia, Complainant, *vs.* The Pennsylvania Railroad Company, et al., Defendants.	Motion for Leave to File Amended Bill of Complaint.

[March 26, 1945.]

Mr. Chief Justice STONE, dissenting.

Mr. Justice ROBERTS, Mr. Justice FRANKFURTER, Mr. Justice JACKSON, and I think that the application of the State of Georgia for leave to file its amended bill of complaint in this Court should be denied (1) because in its judicial discretion, this Court should, without deciding the merits, leave the State to its remedy, if any, in the district court; (2) because the State lacks standing to present the only substantial issue in the case; and (3) because in the present posture of the case, the bill of complaint, for several reasons, fails to state a cause of action for which a court of equity can give effective relief.

As the Court concedes and for reasons which will presently be more fully considered, the State, under the rule laid down in *Keogh* v. *Chicago & Northwestern Ry. Co.*, 260 U. S. 156, cannot maintain its suit for damages resulting from the alleged conspiracy to fix unlawful interstate railroad freight rates. But the Court grants Georgia's application to file on the ground that its bill of complaint, as now amended, states a cause of action under § 16 of the Clayton Act, c. 323, 38 Stat. 737, 15 U. S. C. § 26, for an injunction against a conspiracy in violation of the antitrust laws. The Court holds that such a suit is within the original jurisdiction of this Court, conferred by Article III, § 2, Cls. 1 and 2 of the Constitution. Clause 1 provides that the judicial power of the United States extends "to all Cases, in Law and Equity, arising under . . . the Laws of the United States" and "to Controversies . . . between a State and Citizens of another State . . . ." Clause 2 confers on this Court original jurisdiction of those cases or controversies "in which a State shall be Party."

The Court disregards the fainthearted and unconvincing assertion of the State that it has a "common law" cause of action entitling it, independently of the Clayton Act and the federal antitrust laws, to maintain the present suit to restrain the alleged conspiracy to fix and maintain rates or charges for the interstate transportation of freight. For present purposes we may assume the soundness of this contention, for we are of the opinion that the objections to the maintenance of the present suit are essentially the same, whether it be regarded as a suit upon a cause of action arising under the Clayton Act or as one maintainable upon the equitable principles generally applicable in the federal courts independently of the Clayton Act.

I.

If it be assumed that the State may maintain this action, either as *parens patriae* or for the injury to itself as a shipper and consignee of interstate freight, the right sought to be established is in point of substance like that of a private corporation, and the remedy asked is one normally pursued in district courts whose facilities and prescribed judicial duties are better adapted to the trial of issues of fact than are those of this Court. In an original suit here, even when the case is first referred to a master, this Court has the duty of making an independent examination of the evidence, a time consuming process which seriously interferes with the discharge of our ever increasing appellate duties. No reason appears why the present suit may not be as conveniently proceeded with in the district court of the proper venue as in this Court, or why the convenience of the parties and witnesses, as well as of the courts concerned, would be better served by a trial before a master appointed by this Court than by a trial in the appropriate district court with the customary appellate review. The case seems preeminently one where this Court may and should, in the exercise of its discretion and in the interest of a more efficient administration of justice, decline to exercise its jurisdiction, and remit the parties to the appropriate district court for the proper disposition of the case there. *North Dakota* v. *Chicago & Northwestern Ry.*, 257 U. S. 485; *Georgia* v. *Chattanooga*, 264 U. S. 472, 483; *Oklahoma ex rel. Johnson* v. *Cook*, 304 U. S. 387, 396; *Massachusetts* v. *Missouri*, 308 U. S. 1, 17-20.

It is said that Georgia should not be deprived of the jurisdiction of this Court unless it can bring suit against all the defen-

dants in one convenient district; and that there is no reason for assuming that all the defendants are amenable to suit in any one judicial district. But this puts the shoe on the wrong foot. It is Georgia which seeks to invoke our equity jurisdiction to hear this case, and when the question of our discretionary power to remit the parties to an adequate remedy in some other court is raised, it is incumbent upon it to show that it will be unable to reach all the defendants in a convenient district. And Georgia, although invited on the argument of this motion to do so, has made no showing that the suit cannot be proceeded with in a district court as readily as in this Court. It made no such allegation in the amended bill of complaint which it tenders.[1] Hence we can only conclude that there is no such obstacle.

Further, it may be readily determined from standard works of reference, such as The Official Guide of the Railways, Moody's Steam Railroads, railroad timetables, and telephone directories, that the supposed difficulty is not a real one. Under § 12 of the Clayton Act, 15 U. S. C. § 22, these defendants may be sued in any district in which they are "found" or "transact business." A corporation both is "found" and "transacts business" in a district in which it operates a railroad or in which it maintains an office for the solicitation of freight or passenger traffic. See *Eastman Kodak Co.* v. *Southern Photo Co.*, 273 U. S. 359, 370-374; *United States* v. *Univis Lens Co.*, 316 U. S. 241, 246. These facts may be ascertained readily from the sources we have mentioned. It appears from them that there are several districts which would be as convenient for a trial as Washington, D. C., where proceedings before this Court would be had, and in which Georgia may obtain service of process upon at least as many of the defendants named in the complaint, as it may sue in this Court. For Georgia, itself, as well as this Court, seems reconciled to the suit's continuing here with but eighteen of the twenty defendants, since two may be required to be dismissed from the suit as citizens of Georgia.[2]

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[1] Some reliance is placed on an allegation of the proposed amended complaint, which, in its context, is that the matters of which complaint is made are not within the jurisdiction of the *state* courts of Georgia; but that has no bearing on the question whether they are within the competence of a federal district court in Georgia or in any other State.

[2] These two defendants are the Seaboard Air Line Railway Co., and the Nashville, Chattanooga & St. Louis Ry., two of the largest of the southern defendants.

Of the twenty defendants, at least 18, not including the New York, Chicago & St. Louis R. R. Co., and the Richmond, Fredericksburg and Potomac R. R. Co., (R. F. & P.) are within the jurisdiction of the Northern District of Georgia. Of these defendants, at least 19, all but the R. F. & P., transact business in the Northern District of Illinois and in the Southern District of New York. At least 18, not including the R. F. & P., and the Nashville, Chattanooga & St. Louis Ry., are amenable to suit in the Western District of Pennsylvania and in the Eastern District of Michigan. At least 18, all but the R. F. & P., and the Carolina, Clinchfield and Ohio Railway,[3] are suable in the Eastern District of Missouri. Thus, there is no want of a suitable forum in which Georgia can reach at least the same number of defendants as she may sue in this Court. And it may be that service can be had on the other defendants in the districts named.

II.

If leave to file were denied, as we think it should be, without prejudice to a suit in a district court, it would be unnecessary at this stage of the proceedings to pass upon the question whether the suit is one which a court of equity could entertain. But in assuming jurisdiction of the case, the Court passes on that question. Hence it becomes necessary to state the reasons why, in the present posture of the case, the State does not state a case for relief within our original jurisdiction.

The gist of the cause of action asserted by the amended complaint is the injury visited upon the inhabitants of the State of Georgia by the alleged conspiracy among the defendant railroads to fix and maintain unlawfully excessive and discriminatory rates upon freight moving by interstate rail transportation to and from Georgia. It is further alleged that the conspiracy violates the Sherman Act, and that its effect is to retard the economic growth of the State. To this is added what the Court concedes is a mere "makeweight" allegation of injury to the State in its capacity as an owner of a railroad, and as a shipper and consignee of freight.

But the inhabitants of the State who have suffered injury or who are threatened with injury by the unlawful practices alleged

[3] This defendant has been operating since 1924 as the Clinchfield Railroad Company, under lease to the Atlantic Coast Line R. R. Co., and the Louisville & Nashville R. R. Co.

in the amended complaint are alone entitled to seek a legal remedy for their injury, and are the proper parties plaintiff in any suit to enforce their rights which are alleged to have been infringed. It has long been settled by the decisions of this Court that a State is without standing to maintain suit for injuries sustained by its citizens and inhabitants for which they may sue in their own behalf. *New Hampshire* v. *Louisiana*, 108 U. S. 76; *Louisiana* v. *Texas*, 176 U. S. 1; *Oklahoma* v. *Atchison, T. & S. F. Ry. Co.*, 220 U. S. 277, 289; *Oklahoma ex rel. Johnson* v. *Cook*, *supra*, 395-396; *Jones ex rel. Louisiana* v. *Bowles*, 322 U. S. 707. And many years ago it was established by decisions of this Court, whose authority has remained unimpaired until discarded by the opinion of the Court just announced, that a State does not stand in such relation to its citizens and inhabitants as to enable it to maintain an original suit in this Court to protect them by injunction from injuries to the State's economy resulting from the maintenance of unlawful interstate freight rates. *Oklahoma* v. *Atchison, T. & S. F. Ry. Co.*, *supra*; cf. *Oklahoma* v. *Gulf, C. & S. F. Ry. Co.*, 220 U. S. 290, 301.

In the *Atchison Railway* case the plaintiff State alleged as the basis for its capacity to sue for relief, see 220 U. S. at 283-284, as does Georgia here, that the maintenance of the unlawful structure of freight rates on commodities widely used by inhabitants of the State, was " 'a menace to the future of said State' . . . [and] a hindrance to the growth of the State." This Court nevertheless held that the wrong was to the individuals of the State, and that the State was therefore not in a position to bring the suit as *parens patriae*.

The federal government is *parens patriae* with respect of the cause of action here alleged, and not the State. The federal government alone stands in such relationship to the citizens and inhabitants of the United States, as to permit the bringing of suit in their behalf, to protect them from the violation of federal laws relating to interstate commerce. See *Massachusetts* v. *Mellon*, 262 U. S. 447, 485-486; *Florida* v. *Mellon*, 273 U. S. 12, 18; *Jones ex rel. Louisiana* v. *Bowles*, *supra*. The Sherman Act, §§ 1-4, 15 U. S. C. §§ 1-4, recognized that it is the United States which is *parens patriae*, when it authorized the United States, not the individual States, to bring criminal prosecutions or suits for injunctions under the Act.

When the United States brings such a suit it is acting on behalf of the people of the United States, and in the national interest. The authority to bring such suits includes the discretionary authority not to bring them, if the responsible officers of the government are of the opinion that a suit is not warranted or would be of disservice to the national interest. To permit a State to bring a Sherman Act suit in behalf of the public is to fly in the face of the national policy established by Congress that the federal government should determine when such a suit is to be brought and how it should be prosecuted.

Thus the Sherman Act entrusted to the national government the duty to represent the people in the vindication of their rights under the anti-trust laws. And this is confirmed by § 16 of the Clayton Act, which permits injunction suits by the United States against common carriers in respect of matters within the province of the Interstate Commerce Commission, while prohibiting such suits to all others, including a State.

III.

But even if, as the Court decides, Georgia has standing to maintain this suit, either in its own right or as *parens patriae*, and this Court has jurisdiction of the suit and should, in the exercise of its discretion, entertain it rather than remit the parties to the district court, the more important question remains whether the present suit is one in which a court of equity can give any effective relief.

The suit, so far as the Court allows its prosecution, is in equity to restrain an alleged conspiracy by the defendant rail carriers to fix and maintain unjust, unlawful, excessive, and discriminatory freight rates in violation of the antitrust laws. Section 16 of the Clayton Act, 15 U. S. C. § 26, authorizes "any person" to maintain a suit to restrain violations of the antitrust laws, and the State of Georgia, suing for its own injuries, is a person within the meaning of that section. *Georgia* v. *Evans*, 316 U. S. 159. The section provides that the relief to be given is an injunction "against threatened loss or damage by a violation of the antitrust laws . . . , when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings. . . ." And even though, as asserted, the suit be maintainable in the federal courts independently of the Clayton Act,

the controlling principles governing the maintenance of the suit are the same in either case. The plaintiff must show threatened injury, *Vicksburg Waterworks Co.* v. *Vicksburg*, 185 U. S. 65, 82; *Paine Lumber Co.* v. *Neal*, 244 U. S. 459, 471; *Duplex Co.* v. *Deering*, 254 U. S. 443, 464-465; compare *Texas* v. *Florida*, 306 U. S. 398, 406-412 with *Massachusetts* v. *Missouri*, *supra*, 15-16, for which he is without other adequate remedy, *Matthews* v. *Rodgers*, 284 U. S. 521, 525-526, and cases cited; *Schoenthal* v. *Irving Trust Co.*, 287 U. S. 92, 94; *Myers* v. *Bethlehem Corp.*, 303 U. S. 41, 50-52, and cases cited, and for which a court of equity is able to provide a remedy.

Georgia is threatened with injury only as the alleged conspiracy will result in the defendants' charging freight rates other than those which would exist in the absence of the conspiracy. That is, Georgia is not injured unless other rates than those now in force would be charged if the alleged conspiracy were to cease. While threatened damage in that sense could be assumed in a free competitive market, freight rates are not, under the Interstate Commerce Act, arrived at by the processes of free competition. The requirements of the Act are, as we will see, that the rates be just and reasonable and that they accord with the national transportation policy; the determination, in the first instance, whether the rates conform to those standards is left by Congress to the Interstate Commerce Commission, not to the courts. And unless Georgia can show that the present rates are unlawful, or that some other rate structure, which could be substituted for that now in force, would be just and reasonable, which Georgia cannot do without prior resort to the Commission, it can not show that any other structure could lawfully exist or that any injury to it is threatened by the conspiracy.

It follows from this that the prerequisites to the maintenance of the present suit are lacking for the following reasons: First, the State has not availed itself of or exhausted the administrative remedies provided by the Interstate Commerce Act, which may afford an adequate remedy and which must in any case precede the institution of the present suit in equity. Second, the suit as now framed falls within the proviso of § 16 of the Clayton Act denying to any "person", except the United States, authority "to bring suit in equity for injunctive relief against any common carrier subject to the provisions of" the Interstate Commerce Act, "in respect of any matter subject to the regulation, supervision,

or other jurisdiction of the Interstate Commerce Commission." And third, in the absence of a determination by the Commission of the unlawfulness of the interstate freight tariffs filed or proposed to be filed by the several defendant carriers, no court of equity could, within the scope of its authority, frame a decree effectively enjoining an agreement or "conspiracy" to file tariffs establishing interstate freight rates.

First. The fact that a State may constitutionally invoke the jurisdiction of this Court in a suit brought by it against citizens of another State, does not dispense with the further requisite that if equitable relief is sought, the bill of complaint must state a cause of action cognizable in equity, of such a nature that the Court can give relief. *Texas* v. *Florida, supra,* 405. It is, as we have said, a familiar principle governing the exercise of equity jurisdiction of federal courts that equitable relief may be invoked only when the plaintiff is without other adequate remedy. And it is a corollary of this that a suitor may not seek such relief until he has exhausted his available administrative remedies. *Myers* v. *Bethlehem Corp., supra,* 51, n. 9, and cases cited; *Natural Gas Co.* v. *Slattery,* 302 U. S. 300, 310-311.

Here, by the terms of § 16 of the Clayton Act, as well as the principles generally governing equitable relief in the federal courts, the State, in order to secure the aid of equity, must show injury caused or threatened by the alleged unlawful acts of which it complains. Since the wrongful acts relied upon are a conspiracy to adopt and maintain unjust, unlawful, excessive or discriminatory freight rates, the only threatened injury to the State or its inhabitants, resulting from the conspiracy, is that which is or may be caused by such unlawful rates.

But the Interstate Commerce Act requires all interstate rail carriers, before putting into effect rates or charges for interstate transportation to adopt and file with the Commission just and reasonable rates. §§ 1(4)(5)(6), 6(1)(3), 49 U. S. C. §§ 1 (4)(5)(6), 6(1)(3). It confers on the Commission exclusive jurisdiction to determine the lawfulness of all rates appearing in the filed tariffs, and authority to suspend rates, and to order the railroad to cease and desist from charging other than the lawful rates. §§ 15(1)(7). 49 U. S. C. § 15(1)(7). The Commission's determination is to be in accordance with the "national transportation policy", to develop and preserve a national transportation system, see *Wisconsin Rail-*

road Commission v. *Chicago, B. & Q. R. R. Co.*, 257 U. S. 563, 585; *New England Divisions Case*, 261 U. S. 184, 189-190; *Railroad Commission* v. *Southern Pacific Co.*, 264 U. S. 331, 341-342, and to establish and maintain "reasonable charges . . . , without . . . unfair or destructive competitive practices . . . ." Transportation Act of 1940, c. 722, 54 Stat. 899, § 1.

The Commission is directed to consider the effect of rates on the movement of traffic, and the need of adequate and efficient railway transportation service at low cost, as well as the carriers' need of revenues sufficient to enable them to provide that service. Interstate Commerce Act, as amended, § 15a, 49 U. S. C. § 15a. In fixing rates or divisions, the Commission's determination may take account of the financial needs of the weaker carriers, by giving them a larger share of divisions, or by a general rate increase.[4] *New England Divisions Case, supra*, 189-195; *Beaumont, S. L. & W. R. Co.* v. *United States*, 282 U. S. 74; cf. *Ann Arbor R. R. Co.* v. *United States*, 281 U. S. 658. It may fix minimum as well as maximum rates, § 15, 49 U. S. C. § 15, thus permitting it to prevent cut-throat competition and to protect weaker competitors. It may consider the effect of competing means of transportation, or other relevant circumstances and conditions attending the transportation service. See *Barringer & Co.* v. *United States*, 319 U. S. 1, and authorities cited; and on the considerations upon which the Commission fixes rates, see Sharfman, The Interstate Commerce Commission, Volume III-B. These and many other controlling factors, which enter the Commission's determination of rates, may be irrelevant to decision in an ordinary Sherman Act case, but are inextricably interwoven with the present suit, in which the State must establish that injury to it is threatened by the conspiracy to fix freight rates.

The Commission's orders are enforceable by injunctions in the district courts. § 16(12), 49 U. S. C. § 16(12). And the administrative remedy is exclusive of any which may be afforded by courts, at least until the Commission has passed upon the

[4] Under the recapture clause of the Transportation Act of 1920, c. 91, 41 Stat. 488, § 422, adding § 15a to the Interstate Commerce Act, profits of carriers in excess of a fair return were held in trust for purposes of improving railroad service. Dayton-Goose Creek Ry. v. United States, 263 U. S. 456. The recapture clause was repealed by the Act of June 16, 1933, c. 91, 48 Stat. 220, § 205. But its underlying purpose to permit rates sufficient to provide an adequate and efficient transportation system was reaffirmed by the declaration of a "National Transportation Policy" which the Commission is commanded to observe, by the Transportation Act of 1940, c. 722, 54 Stat. 899, § 1.

validity of the rates and classifications involved. *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Robinson* v. *Baltimore & Ohio R. R. Co.*, 222 U. S. 506; *Northern Pacific Ry. Co.* v. *Solum*, 247 U. S. 477; *Director General of Railroads* v. *The Viscose Company*, 254 U. S. 498; *Midland Valley R. R. Co.* v. *Barkley*, 276 U. S. 482. Until the Commission acts, no court can say that the rates are not lawful and reasonable or that they are not within the lowest range of the zone of reasonableness. Nor can either be assumed, the burden being upon Georgia to show that it is injured by the acts of which it complains. And if the present rates are at the lowest point of reasonableness, as they well may be, Georgia is not injured, for in that event no lower rates could be lawfully enforced by the Commission or the courts.

It is not without pertinence to the present application that the State of Georgia and seven other southern States are parties to proceedings now pending before the Interstate Commerce Commission, Docket No. 28300, Class Rate Investigation, and Docket No. 28310, Consolidated Freight Classification, in which the Chairman of the Georgia Public Service Commission has appeared as the principal witness on behalf of the State. In these proceedings the witness urged uniformity of rates in southern and official classification territories, in conformity to the official territory system of rates. The witness relied on § 3(1) of the Act, 49 U. S. C. § 3(1), making it unlawful for any rail carrier to make or give undue or unreasonable preferences or advantage to any particular person, locality or particular description of traffic; on § 1(4)(5)(6), 49 U. S. C. § 1(4)(5)(6), requiring common carriers by rail to establish just and reasonable rates, fares, charges and classifications; and on § 5(b) of the Transportation Act of 1940, which requires the Commission to investigate the lawfulness of rates between points in different classification territories and to enter such orders as may be appropriate for the removal "of any unlawfulness which may be found to exist".

It is plain that the Commission has jurisdiction in these proceedings to set aside such unlawful rates as may have resulted from the conspiracies alleged in the State's amended complaint. If the Commission orders them set aside, nothing further remains for any court to do, for reasons which will presently more fully appear, save only as it may be asked to review or enforce the Commission's order. Without prior resort to the Commission,

Georgia does not and cannot establish in a court proceeding, that it is threatened with injury by the conspiracy or that it is necessary for it to resort to the courts to secure the relief which it seeks in the present suit.

The State seeks to avoid these plain provisions of the Clayton and Interstate Commerce Acts by its insistence that by its amended complaint it asks relief not from the unlawful rates which have been or will be established as a result of the alleged conspiracy, but from the conspiracy itself, over which the Interstate Commerce Commission is said to have no jurisdiction, and from which it can give no relief. In the State's bill of complaint, as originally presented, it sought an injunction setting aside the unlawful rates. Evidently realizing that all courts are precluded from taking such action before the Commission has determined the validity of the rates, the State sought to overcome the difficulty by an amendment to its bill of complaint, purporting to withdraw its attack on the rates and assailing the conspiracy alone. But, as the Court seems to recognize, even the amended complaint contains allegations and raises issues as to whether the rates charged by the defendants are discriminatory. The complaint therefore raises questions as to interference with the primary jurisdiction of the Interstate Commerce Commission which are essentially the same as those presented by the original bill.

This verbal maneuver, as a means of conferring jurisdiction on this Court, is futile, for the reason, as we have said, that the State cannot maintain its suit in equity either under § 16 of the Clayton Act or upon general equity principles, without establishing a threatened injury to it or those whom it represents. And this is equally true whether it sues as *parens patriae* or as owner of a railroad, and a shipper and consignee of freight. The threatened injury can ensue only from the maintenance of the unlawful rates and practices, which are specially charged to be discrimininatory. But "a rate is not necessarily illegal because it is the result of a conspiracy in restraint of trade in violation of the Anti-Trust Act. What rates are legal is determined by the Act to Regulate Commerce" and not by the antitrust laws. *Keogh* v. *Chicago & Northwestern Ry. Co.*, *supra*, 162. Hence it follows in this case that the suit can be maintained only by showing that the alleged conspiracy has resulted or will result in unlawful rates, or that without the conspiracy, lawful rates, other than those now in force, would prevail, determinations which can be made only

by the Interstate Commerce Commission, and which must be made by it, before this Court can take any judicial action based upon such determinations.

We assume for present purposes that a conspiracy to fix lawful rates may be a violation of the antitrust laws, as was intimated in the *Keogh* case. But as this Court there pointed out, pages 161-162, the remedy is not to be had by the suit of a private individual; "the Government may have redress by criminal proceedings under § 3, by injunction under § 4, and by forfeiture under § 6." The State cannot, more than a private individual, bring a suit under the Clayton Act to restrain the conspiracy unless it be a conspiracy to do something injurious to the plaintiff. The only such injury alleged in a great variety of ways is that caused by unlawful and discriminatory freight rates established by the conspiracy. No such injury can be presumed from a conspiracy to fix lawful rates or to fix any rate unless it can be known with what new rates those now in force will be replaced by Commission action.

For this and like reasons, this Court has uniformly refused to permit a party under guise of suing under the antitrust laws, to seek in the courts by indirection, determinations which are reserved for the Commission in the first instance. *Keogh* v. *Chicago & Northwestern Ry. Co., supra*; *Central Transfer Co.* v. *Terminal Railroad Assn.*, 288 U. S. 469, 476; *Terminal Warehouse Co.* v. *Pennsylvania R. R. Co.*, 297 U. S. 500; and compare *United States Navigation Co.* v. *Cunard S. S. Co.*, 284 U. S. 474; *Armour & Co.* v. *Alton R. R. Co.*, 312 U. S. 195. As these cases show, the State cannot make its assault on a matter said not to be within the jurisdiction of the Commission, when adjudication must turn upon matters which are within its jurisdiction. Here the Court cannot ascertain and enjoin threatened injury resulting from a conspiracy to fix unlawful freight rates without considering their lawfulness and reasonableness, and thus encroaching upon the authority which Congress has given to the Commission alone. The case is therefore peculiarly one for the application of the rule that equity will not undertake to give relief until the plaintiff has exhausted his administrative remedies, for until that has occurred, it cannot be known that the plaintiff is without adequate relief or, in the event that it is not, that equity can know what relief may appropriately be given.

Second. Independent of, but supplementing the considerations which indicate the unmistakable intention of Congress that a suit like the present should not be made the means of breaking down the regulatory powers of the Commission, are the provisions of § 16 of the Clayton Act. As already noted, a proviso to the section withholds from "any person" other than the United States the right "to bring suit in equity for injunctive relief against any common carrier subject to the provisions of" the Interstate Commerce Act "in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission."

When the Clayton Act was adopted in 1914, the Commission had already been given broad powers to fix and regulate rates by the Hepburn Act of June 29, 1906, c. 3591, 34 Stat. 584 and the Mann-Elkins Act of June 18, 1910, c. 309, 36 Stat. 539. Congress realized the danger that indiscriminate suits for injunctions under the antitrust laws, in many cases affecting interstate rail carriers, would substitute the many district courts for the Commission, the single rate making authority, a retrogression from the consistent Congressional policy to avoid confusion and conflict in this field. Hence, when Congress, by § 16 of the Clayton Act, for the first time authorized private suitors to seek relief by injunction under the antitrust laws, it was at pains to bar such suits against carriers with respect to any matters within the province of the Commission. Thus it was the purpose of § 16 to preclude the breakdown of the unified rate structure established for the nation by the Commission, as would inevitably result from the maintenance under the Sherman Act of numerous individual suits, like the present one, affecting rates which Congress had left within the Commission's exclusive control in the first instance.

The statutory command can no more be evaded than may the exclusive jurisdiction of the Commission to regulate rates, by saying that the "relief" which Georgia seeks is not a matter subject to the jurisdiction of the Commission. Section 16 does not foreclose a suit merely where the "relief" is a matter subject to the jurisdiction of the Commission. Its words are much broader. They deny the remedy, except to the United States, "in respect of *any matter* subject to . . . the jurisdiction" of the Commission. As we have said, Georgia cannot show damage save by showing that the Commission would approve some rate structure other than

that presently existing. That is certainly a "matter subject to the . . . jurisdiction" of the Commission, sufficient to preclude a suit under § 16.

The inseparability of equitable relief against a rate making conspiracy from that against the unlawfulness of the rates which are or may be its fruits, has already been pointed out. Suffice it to say here that precisely the argument now made for disregarding the prohibition of § 16 was rejected by this Court in a suit brought by an injured private party to restrain agreements or conspiracies to do acts within the jurisdiction of the Commission. *Central Transfer Co.* v. *Terminal Railroad Assn., supra.* And compare *United States Navigation Co.* v. *Cunard S. S. Co., supra,* where this Court gave the like construction to § 16 of the Clayton Act, in its comparable relation to the authority of the Shipping Board to fix rates under the Shipping Act of 1916, c. 451, 39 Stat. 728, 46 U. S. C. §§ 801-842, as amended by the Merchant Marine Act of 1920, c. 250, 41 Stat. 988.

In the *Central Transfer Co.* case it was urged that § 16 of the Clayton Act did not preclude the relief sought, since the Commission did not have jurisdiction over the agreements or contracts complained of, but only over the acts involved in their performance. This Court gave the conclusive answer which we think should be given now, that no injunction could be effectively given against the agreement or conspiracy without in some manner relating it to the lawfulness of the acts done or to be done in execution of the agreement or contract, and that the determination of the lawfulness of those acts and their regulation were within the exclusive jurisdiction of the administrative agency. In that case, as well as in the *United States Navigation Co.* case, it was pointed out that any other construction would defeat the plain purpose of § 16 to preclude, except in suits by the Government, judicial interference with or prejudgment of the lawfulness of matters which Congress has indubitably placed within the jurisdiction of the administrative agency.

Equitable relief under § 16 in the present case must be denied upon the principle identical with that upon which the Court has relied in denying the right of the State to recover damages in the suit which it proposes here. The fact that in this branch of the case, as in *Keogh* v. *Chicago & Northwestern Ry. Co., supra,* and *Terminal Warehouse Co.* v. *Pennsylvania R. R. Co., supra,* the

suit is for damages resulting from unlawful rates, instead of an injunction restraining threatened damage or injury, is without significance. For in either case, damage cannot ensue unless the agreement or conspiracy results in an unlawful rate or practice of whose lawfulness the Commission is the sole arbiter. And in both, this Court has held that the suit cannot be maintained without first resorting to the Commission.

Congress did not see fit by its extensive revision of the Interstate Commerce Act in the Transportation Act of 1940, to alter the application of the Clayton Act to the jurisdiction of the Interstate Commerce Commission. For us to alter it now to meet the exigencies of a particular case, which presents no plausible relevant differences from those which we have heretofore decided, is an assumption of power which only Congress could rightly exercise, and a power which it has plainly declined to exercise.

Third. Even assuming, as the State does, and as the Court is persuaded, that a court of equity could be called upon to enjoin a conspiracy to establish rates in anticipation of a determination of their unlawfulness, it would plainly be impossible to frame a decree for relief in advance of a determination by the Commission that the present rates are unlawful, or that those resulting from the decree would be lawful. Courts cannot enjoin, in general terms, violations of the Sherman Act, without specifying what acts are to be enjoined as violations, or as aiding or inducing violations. *Swift & Co.* v. *United States*, 196 U. S. 375, 396; *Swift & Co.* v. *United States*, 276 U. S. 311, 328; cf. *New Haven R. R. Co.* v. *Interstate Commerce Comm.*, 200 U. S. 361, 404; *Labor Board* v. *Express Publishing Co.*, 312 U. S. 426. Nor can it determine in advance what rates may be lawfully established since the jurisdiction to make that determination is reserved exclusively to the Commission.

Hence the suggestion, which the Court has been persuaded to accept, that this Court can find a way to enjoin the alleged conspiracy to fix rates, without regard to what rates are or may be agreed upon and whether the Commission finds them to be lawful or unlawful, is an invitation to a course of the veriest futility. Any injunction which this Court could properly frame must not be an idle gesture. It must be one to prevent the threatened injury. An injunction to prevent a conspiracy without relation to its injurious consequences, could not have that effect, and the

injunction could be related to those consequences in this case only by defining rates and practices which the Commission has not declared, and may or may not declare, to be unlawful.

It is futile to attempt to enjoin a conspiracy to fix rates because of their injurious effect on the plaintiff, unless it is known that they are unlawful or will be and unless the Court is free to determine the point. And it is futile for this Court to attempt to prescribe what rates will be lawful since its determination will not be binding upon the Commission, and may be ignored by it. Indeed, even after the Commission has made such a determination this Court, in the first instance, is without power to set it aside, *North Dakota* v. *Chicago & Northwestern Ry. Co.*, *supra*; *Texas* v. *Interstate Commerce Comm.*, 258 U. S. 158, 164-165, for exclusive jurisdiction to set aside an order of the Commission is vested in a district court of three judges under the Urgent Deficiencies Act, c. 32, 38 Stat. 219, as amended, 28 U. S. C. §§ 41(28), 43.

It is the duty of this Court to dismiss an original suit in which it cannot make an effective decree. See *Arizona* v. *California*, 298 U. S. 558, 572, and cases cited. *A fortiori*, it is its duty not to entertain such a suit.

The soundness and the compelling necessity for the construction which the Court has hitherto given to § 16 of the Clayton Act could not be better illustrated and emphasized than by reference to the situation exhibited by the case which is now before us. Any decree, effective to prevent the injury of which the State complains, would necessarily result in further inequalities in rates, such as are now alleged to exist. The Court cannot enjoin as unlawful the alleged conspiracy to establish rates without undertaking to say what rates and practices are to be deemed lawful and what unlawful. But by this determination the Interstate Commerce Commission would not be bound, nor would the United States or any railroad other than those which are parties defendant.

Only Georgia would secure relief approximating that sought by the bill. If relief enjoining the conspiracy complained of were effective to relieve the State of the injury from unlawful rates to which it objects, and without which it could not maintain the suit under § 16, the decree must result in a new rate structure applicable to the railroads which are parties defendant. Prejudice and discrimination would be created as to every other State in southern

territory and as to shippers and consignees of freight in those States who would still be governed by the published tariff rates, against which only Georgia and its citizens would have secured some measure of relief. There would be two sets of rates between the south and the north, one, effected as a result of this Court's decree, applicable to shippers in Georgia over the railroads which are defendants here, and another governed by published tariffs approved by the Commission and applicable to all other shippers and railroads in the south. Since illegality in existing rates is averred because of disparity in the level of rates in two rate making areas, with no allegation that southern carriers receive more than a fair charge for their transportation service, the Court would be required to determine whether the discrimination should be removed by increasing rates in official territory or establishing an intermediate level of new rates, *Interstate Commerce Commission* v. *United States*, 289 U. S. 385, 392—a determination which could be arrived at only by the performance by this Court of the legislative function of rate making which has hitherto been reserved to the Commission.

If all this is to be avoided by the injunction against the alleged conspiracy, but without enjoining any of its asserted evil consequences in rate making, the issue originally tendered would, by the amendment to the bill of complaint, seem to amount to little if anything more than a political issue. The amended complaint alleges that "The wrong done transcends that experienced by individuals. For as men, firms, and corporations have come and gone, the conspiracy has continued over the decades." While trial upon the original complaint might have reduced this grievance to the dimensions of a cause of action to enjoin illegal freight rates injurious to the State, it now appears as the grievance of a section of the country against an existing federal system of rate making, which should be addressed to Congress rather than to this Court.

The support which the Department of Justice lends to Georgia's contentions by the brief amicus, filed in this Court in behalf of the United States, removes any evident need for entertaining this suit. The Government is charged with the enforcement of the antitrust laws, and is authorized by § 4 of the Sherman Act and § 16 of the Clayton Act to maintain suits for that purpose, which others cannot bring. If it believes that the alleged conspiracy

exists and should be stopped by the remedial action of courts, without resort to the Commission, there would seem to be no reason why, avoiding the many technical obstacles to the present suit, it should not proceed to remedy in the usual manner the grievances of the citizens of the United States including citizens of Georgia.

Other objections aside, it seems obvious that this Court cannot give any effective relief removing the threat of injury to the State resulting from a railroad rate conspiracy without breaking down the system of rate regulation by the Commission—a system which Congress has painstakingly built up since the decisions, more than forty-five years ago, in *United States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290, and *United States* v. *Joint Traffic Assn.*, 171 U. S. 505, when the Commission was without power to prescribe rates. See *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, *supra*; *Terminal Warehouse Co.* v. *Pennsylvania R. Co.*, *supra*, 513.

The reasoning of the Court is not and cannot be restricted to this case. If Georgia may prosecute the present suit, every shipper or consignee of freight who asserts injury by a conspiracy respecting railroad rates in violation of the antitrust laws, may maintain a like suit in a district court. The prosecution of such suits cannot fail to bring chaos into the field of interstate rate making. The entry of decrees for the plaintiffs could only mean the breakdown of the unified system of fixing rates by Commission action, which Congress has ordained by the Interstate Commerce Act. It was the purpose of § 16 of the Clayton Act to preclude such a breakdown. Its purpose can and should be effected by the refusal of this Court to entertain the proposed suit.

O. 12,
O. 1 + 3, Frankfurter J.

SUPREME COURT OF THE UNITED STATES

No. 12, ORIGINAL.—OCTOBER TERM, 1946.

United States of America, Plaintiff,
v.
State of California.
} Original.

[June 23, 1947.]

MR. JUSTICE BLACK delivered the opinion of the Court.

The United States by its Attorney General and Solicitor General brought this suit against the State of California invoking our original jurisdiction under Article III, § 2, of the Constitution which provides that "In all Cases . . . in which a State shall be a Party, the supreme Court shall have original Jurisdiction." The complaint alleges that the United States "is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California." It is further alleged that California, acting pursuant to state statutes, but without authority from the United States, has negotiated and executed numerous leases with persons and corporations purporting to authorize them to enter upon the described ocean area to take petroleum, gas, and other mineral deposits, and that the lessees have done so, paying to California large sums of money in rents and royalties for the petroleum products taken. The prayer is for a decree declaring the rights of the United States in the area as against California and enjoining California and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States.

California has filed an answer to the complaint. It admits that persons holding leases from California, or those claiming under it, have been extracting petroleum products from the land under the three mile ocean belt immediately adjacent to California. The basis of California's asserted ownership is that a belt extending three English miles from low water mark lies within the original boundaries of the state, Cal. Const. Art. XII (1849);[1] that the original thirteen states acquired from the Crown of England title to all lands within their boundaries under navigable waters, including a three-mile belt in adjacent seas; and that since California was admitted as a state on an "equal footing" with the original states, California at that time became vested with title to all such lands. The answer further sets up several "affirmative" defenses. Among these are that California should be adjudged to have title under a doctrine of prescription; because of an alleged long existing Congressional policy of acquiesence in California's asserted ownership; because of estoppel or laches; and, finally, by application of the rule of *res judicata*.[2]

After California's answer was filed, the United States moved for judgment as prayed for in the complaint on the

[1] The Government complaint claims an area extending three nautical miles from shore; the California boundary purports to extend three English miles. One nautical mile equals 1.15 English miles, so that there is a difference of .45 of an English mile between the boundary of the area claimed by the Government, and the boundary of California. See Cal. Const. Art. XXI, § 1 (1879).

[2] The claim of *res judicata* rests on the following contention. The United States sued in ejectment for certain lands situated in San Francisco Bay. The defendant held the lands under a grant from California. This Court decided that the state grant was valid because the land under the Bay had passed to the state upon its admission to the Union. *United States* v. *Mission Rock Co.*, 189 U. S. 391. There may be other reasons why the judgment in that case does not bar this litigation; but it is a sufficient reason that this case involves land under the open sea, and not land under the inland waters of San Francisco Bay.

ground that the purported defenses were not sufficient in law. The legal issues thus raised have been exhaustively presented by counsel for the parties, both by brief and oral argument. Neither has suggested any necessity for the introduction of evidence, and we perceive no such necessity at this stage of the case. It is now ripe for determination of the basic legal issues presented by the motion. But before reaching the merits of these issues, we must first consider questions raised in California's brief and oral argument concerning the Government's right to an adjudication of its claim in this proceeding.

First. It is contended that the pleadings present no case or controversy under Article III, § 2, of the Constitution. The contention rests in the first place on an argument that there is no case or controversy in a legal sense, but only a difference of opinion between federal and state officials. It is true that there is a difference of opinion between federal and state officers. But there is far more than that. The point of difference is as to who owns, or has paramount rights in and power over several thousand square miles of land under the ocean off the coast of California. The difference involves the conflicting claims of federal and state officials as to which government, state or federal, has a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land, much of which has already been, and more of which is about to be, taken by or under authority of the state. Such concrete conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences which can only be settled by agreement, arbitration, force, or judicial action. The case principally relied upon by California, *United States* v. *West Virginia*, 295 U. S. 463, does not support its contention. For here there is a claim by the United States, admitted by California, that California has invaded the title or paramount right asserted by the United States to a large area of land and that California has converted to its own use oil which was extracted from

that land. *Cf. United States* v. *West Virginia, supra,* 471. This alone would sufficiently establish the kind of concrete, actual conflict of which we have jurisdiction under Article III. The justiciability of this controversy rests therefore on conflicting claims of alleged invasions of interests in property and on conflicting claims of governmental powers to authorize its use. *United States* v. *Texas,* 143 U. S. 621, 646, 648; *United States* v. *Minnesota,* 270 U. S. 181, 194; *Nebraska* v. *Wyoming,* 325 U. S. 589, 608.

Nor can we sustain that phase of the state's contention as to the absence of a case or controversy resting on the argument that it is impossible to identify the subject matter of the suit so as to render a proper decree. The land claimed by the Government, it is said, has not been sufficiently described in the complaint since the only shoreward boundary of some segments of the marginal belt is the line between that belt and the State's inland waters. And the Government includes in the term "inland waters" ports, harbors, bays, rivers, and lakes. Pointing out the numerous difficulties in fixing the point where these inland waters end and the marginal sea begins, the state argues that the pleadings are therefore wholly devoid of a basis for a definite decree, the kind of decree essential to disposition of a case like this. Therefore, California concludes, all that is prayed for is an abstract declaration of rights concerning an unidentified three-mile belt, which could only be used as a basis for subsequent actions in which specific relief could be granted as to particular localities.

We may assume that location of the exact coastal line will involve many complexities and difficulties. But that does not make this any the less a justiciable controversy. Certainly demarcation of the boundary is not an impossibility. Despite difficulties this Court has previously adjudicated controversies concerning submerged land

boundaries. See *New Jersey* v. *Delaware*, 291 U. S. 361, 295 U. S. 694; *Borax Ltd.* v. *Los Angeles*, 296 U. S. 10, 21–27; *Oklahoma* v. *Texas*, 256 U. S. 70, 602. And there is no reason why, after determining in general who owns the three-mile belt here involved, the Court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary. *Oklahoma* v. *Texas*, 258 U. S. 574, 582. Such practice is commonplace in actions similar to this which are in the nature of equitable proceedings. See *e. g. Oklahoma* v. *Texas*, 256 U. S. 608–609; 260 U. S. 606, 625, 261 U. S. 340. California's contention concerning the indefiniteness of the claim presents no insuperable obstacle to the exercise of the highly important jurisdiction conferred on us by Article III of the Constitution.

Second. It is contended that we should dismiss this action on the ground that the Attorney General has not been granted power either to file or to maintain it. It is not denied that Congress has given a very broad authority to the Attorney General to institute and conduct litigation in order to establish and safeguard government rights and properties.[3] The argument is that Congress has for a long period of years acted in such a way as to manifest a clear policy to the effect that the states, not the Federal Government, have legal title to the land under the three-mile belt. Although Congress has not expressly declared such a policy, we are asked to imply it from certain conduct of Congress and other governmental agencies charged with responsibilities concerning the national domain. And, in effect, we are urged to infer that Congress has by

[3] 5 U. S. C. §§ 291, 309; *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273, 279, 284; *Kern River Co.* v. *United States*, 257 U. S. 147, 154–55; *Sanitary District* v. *United States*, 266 U. S. 405, 425–426; see also *In re Debs*, 158 U. S. 564, 584; *United States* v. *Oregon*, 295 U. S. 1, 24; *United States* v. *Wyoming*, 323 U. S. 669, 331 U. S. —.

implication amended its long-existing statutes which grant the Attorney General broad powers to institute and maintain court proceedings in order to safeguard national interests.

An Act passed by Congress and signed by the President could, of course, limit the power previously granted the Attorney General to prosecute claims for the Government. For Article IV, § 3, Cl. 2 of the Constitution vests in Congress "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." We have said that the constitutional power of Congress in this respect is without limitation. *United States* v. *San Francisco*, 310 U. S. 16, 29–30. Thus neither the courts nor the executive agencies, could proceed contrary to an Act of Congress in this congressional area of national power.

But no Act of Congress has amended the statutes which impose on the Attorney General the authority and the duty to protect the Government's interests through the courts. See *In re Cooper*, 143 U. S. 472, 502–503. That Congress twice failed to grant the Attorney General specific authority to file suit against California,[4] is not a sufficient basis upon which to rest a restriction of the

[4] S. J. Res. 208, 75th Cong., 1st Sess. (1938); S. J. Res. 83 and 92, 76th Cong., 1st Sess. (1939). S. J. Res. 208 passed the Senate, 81 Cong. Rec. 9326 (1938), was favorably reported by the House Judiciary Committee, H. R. Rep. 2378, 75th Cong., 3d Sess (1938), but was never acted on in the House. Hearings were held on S. J. Res. 83 and 92 before the Senate Committee on Public Lands and Surveys, but no further action was taken. *Hearings before the Senate Committee on Public Lands and Surveys on S. J. Res. 83 and 92*, 76th Cong., 1st Sess. (1939). In both hearings objections to the resolutions were repeatedly made on the ground that passage of the resolutions was unnecessary since the Attorney General already had statutory authority to institute the proceedings. See *Hearings before the House Committee on the Judiciary on S. J. Res. 208*, 75th Cong., 3d Sess., 42–45, 59–61 (1938); *Hearings on S. J. Res. 83 and 92, supra*, 27–30.

Attorney General's statutory authority. And no more can we reach such a conclusion because both Houses of Congress passed a joint resolution quitclaiming to the adjacent states a three mile belt of all land situated under the ocean beyond the low water mark, except those which the Government had previously acquired by purchase, condemnation, or donation.[5] This joint resolution was vetoed by the President.[6] His veto was sustained.[7] Plainly, the resolution does not represent an exercise of the constitutional power of Congress to dispose of public property under Article IV, § 3, Cl. 2.

Neither the matters to which we have specifically referred, nor any others relied on by California, afford support for a holding that Congress has either explicitly or by implication stripped the Attorney General of his statutorily granted power to invoke our jurisdiction in this federal-state controversy. This brings us to the merits of the case.

Third. The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea. The United States here asserts rights in two capacities transcending those of a mere property owner. In one capacity it asserts the right and responsibility to exercise whatever power and dominion are necessary to protect this country against dangers to the security and tranquility of its people incident to the fact that the United States is located immediately adjacent to the ocean. The Government also appears in its capacity as a member of the family of nations. In that capacity it is responsible for conducting United States relations with other nations. It asserts that proper exercise of these constitutional responsibilities requires that it have power,

[5] H. J. Res. 225, 79th Cong., 2d Sess. (1946); 92 Cong. Rec. 9642, 10316 (1946).

[6] 92 Cong. Rec. 10660 (1946).

[7] 92 Cong. Rec. 10745 (1946).

unencumbered by state commitments, always to determine what agreements will be made concerning the control and use of the marginal sea and the land under it. See *McCulloch* v. *Maryland*, 4 Wheat. 316, 403–408; *United States* v. *Minnesota*, 270 U. S. 181, 194. In the light of the foregoing, our question is whether the state or the Federal Government has the paramount right and power to determine in the first instance when, how, and by what agencies, foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited.

California claims that it owns the resources of the soil under the three-mile marginal belt as an incident to those elements of sovereignty which it exercises in that water area. The state points out that its original Constitution, adopted in 1849 before that state was admitted to the Union, included within the state's boundary the water area extending three English miles from the shore. Cal. Const. (1849) Art. XII, § 1; that the Enabling Act which admitted California to the Union ratified the territorial boundary thus defined; and that California was admitted "on an equal footing with the original States in all respects whatever," 9 Stat. 452. With these premises admitted, California contends that its ownership follows from the rule originally announced in *Pollard's Lessee* v. *Hagan*, 3 How. 212; see also *Martin* v. *Waddell*, 16 Pet. 367, 410. In the *Pollard* case it was held, in effect, that the original states owned in trust for their people the navigable tidewaters between high and low water mark within each state's boundaries, and the soil under them, as an inseparable attribute of state sovereignty. Consequently, it was decided that Alabama, because admitted into the Union on "an equal footing" with the other states, had thereby become the owner of the tidelands within its boundaries. Thus the title of Alabama's tidelands grantee was sustained as valid against that of a claimant

holding under a United States grant made subsequent to Alabama's admission as a state.

The Government does not deny that under the *Pollard* rule, as explained in later cases,[8] California has a qualified ownership[9] of lands under inland navigable waters such as rivers, harbors, and even tidelands down to the low water mark. It does question the validity of the rationale in the *Pollard* case that ownership of such water areas, any more than ownership of uplands, is a necessary incident of the state sovereignty contemplated by the "equal footing" clause. *Cf. United States* v. *Oregon*, 295 U. S. 1, 14. For this reason, among others, it argues that the *Pollard* rule should not be extended so as to apply to lands under the ocean. It stresses that the thirteen original colonies did not own the marginal belt; that the Federal Government did not seriously assert its increasingly greater rights in this area until after the formation of the Union; that it has not bestowed any of these rights upon the states, but has retained them as appurtenances of national sovereignty. And the Government insists that no previous case in this Court has involved or decided conflicting claims of a state and the Federal Government to the three-mile belt in a way which requires our extension of the *Pollard* inland water rule to the ocean area.

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[8] See *e. g., Manchester* v. *Massachusetts*, 139 U. S. 240; *Louisiana* v. *Mississippi*, 202 U. S. 1; *The Abby Dodge*, 223 U. S. 166. See also *United States* v. *Mission Rock Co.*, 189 U. S. 391; *Borax, Ltd.* v. *Los Angeles*, 296 U. S. 10.

Although the *Pollard* case has thus been generally approved many times, the case of *Shively* v. *Bowlby*, 152 U. S. 1, 47–48, 58, held, contrary to implications of the *Pollard* opinion, that the United States could lawfully dispose of tidelands while holding a future state's land "in trust" as a territory.

[9] See *United States* v. *Commodore Park*, 324 U. S. 386, 390, 391; *Scranton* v. *Wheeler*, 179 U. S. 141, 159, 160, 163; *Stockton* v. *Baltimore & N. Y. R. Co.*, 32 F. 9, 20; see also *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53.

It would unduly prolong our opinion to discuss in detail the multitude of references to which the able briefs of the parties have cited us with reference to the evolution of powers over marginal seas exercised by adjacent countries. From all the wealth of material supplied, however, we cannot say that the thirteen original colonies separately acquired ownership to the three-mile belt or the soil under it,[10] even if they did acquire elements of the sovereignty of the English Crown by their revolution against it. *Cf. United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 316.

At the time this country won its independence from England, there was no settled international custom or understanding among nations that each nation owned a three-mile water belt along its borders. Some countries, notably England, Spain, and Portugal, had, from time to time, made sweeping claims to a right of dominion over wide expanses of ocean. And controversies had arisen among nations about rights to fish in prescribed areas.[11] But when this nation was formed, the idea of a three-mile belt over which a littoral nation could exercise rights of ownership was but a nebulous suggestion.[12] Neither the

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[10] A representative collection of official documents and scholarship on the subject is Crocker, The Extent of the Marginal Sea (1919). See also I Azuni, Maritime Law of Europe (published 1806) c. II; Fulton, Sovereignty of the Sea (1911); Masterson, Jurisdiction in Marginal Seas (1929); Jessup, The Law of Territorial Waters and Maritime Jurisdiction (1927); Fraser, *The Extent and Delimitation of Territorial Waters*, 11 Corn. L. Q. 455 (1926); Ireland, *Marginal Seas Around the States*, 2 La. L. Rev. 252, 436 (1940); Comment, *Conflicting State and Federal Claims of Title in Submerged Lands of the Continental Shelf*, 56 Yale L. J. 356 (1947).

[11] See, *e. g.*, Fulton, *op. cit. supra*, 13–19, 144–145; Jessup, *op. cit. supra*, 4.

[12] Fulton, *op. cit. supra*, 24, says in fact that "mainly through the action and practice of the United States of America and Great Britain since the end of the eighteenth century, the distance of three miles

English charters granted to this nation's settlers,[13] nor the treaty of peace with England,[14] nor any other document to which we have been referred, showed a purpose to set apart a three-mile ocean belt for colonial or state ownership.[15] Those who settled this country were interested in lands upon which to live, and waters upon which to fish and sail. There is no substantial support in history for the idea that they wanted or claimed a right to block off the ocean's bottom for private ownership and use in the extraction of its wealth.

It did happen that shortly after we became a nation our statesmen became interested in establishing national dominion over a definite marginal zone to protect our neutrality.[16] Largely as a result of their efforts, the idea of a definite three-mile belt in which an adjacent nation can, if it chooses, exercise broad, if not complete

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from shore was more or less formally adopted by most maritime states as . . . more definitely fixing the limits of their jurisdiction and rights for various purposes, and, in particular, for exclusive fishery."

[13] Collected in Thorpe, American Charters, Constitutions, and Organic Laws (1919).

[14] Treaty of 1783, 8 Stat. 80.

[15] The Continental Congress did for example authorize capture of neutral and even American ships carrying British goods, "if found within three leagues (about nine miles) of the coasts." Journ. of Cong. 185, 186, 187 (1781). *Cf.* Declaration of Panama of 1939, 1 Dept. of State Bul. 321 (1939), claiming the right of the American Republics to be free from a hostile act in a zone 300 miles from the American coasts.

[16] Secretary of State Jefferson in a note to the British minister in 1793 pointed to the nebulous character of a nation's assertions of territorial rights in the marginal belt, and put forward the first official American claim for a three-mile zone which has since won general international acceptance. Reprinted in H. Ex. Doc. No. 324, 42d Cong., 2d Sess. (1872) 553–554. See also Secretary Jefferson's note to the French Minister, Genet, reprinted American State Papers, I Foreign Relations (1833), 183, 384; Act of June 5, 1794, 1 Stat. 381; 1 Kent, Commentaries, 14th Ed., 33–40.

dominion, has apparently at last been generally accepted throughout the world,[17] although as late as 1876 there was still considerable doubt in England about its scope and even its existence. See *The Queen* v. *Keyn*, L. R. 2 Exch. Div. 63. That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. *Cunard Steamship Co.* v. *Mellon*, 262 U. S. 100, 122–124.[18] And this assertion of national dominion over the three-mile belt is binding upon this Court. See *Jones* v. *United States*, 137 U. S. 202, 212–214; *In re Cooper*, 143 U. S. 472, 502–503.

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[17] See Jessup, *op. cit. supra*, 66; *Research in International Law*, 23 A. J. I. L. 249, 250 (Spec. Supp. 1929).

[18] See also *Church* v. *Hubbart*, 2 Cranch 187, 234. Congressional assertion of a territorial zone in the sea appears in statutes regulating seals, fishing, pollution of waters, etc. 36 Stat. 325, 328; 43 Stat. 604, 605; 37 Stat. 499, 501. Under the National Prohibition Act territory including "a marginal belt of the sea extending from low-water mark outward a marine league, or 3 geographical miles" constituting "the territorial waters of the United States" was regulated. ~~41 Stat. 305. Reprinted in *Research in International Law*, *supra*, 250.~~ Anti-smuggling treaties in which foreign nations agreed to permit the United States to pursue smugglers beyond the three-mile limit contained express stipulations that generally the three-mile limit constitutes "the proper limits of territorial waters." See *e. g.*, 43 Stat. 1761 (Pt. 2).

There are innumerable executive declarations to the world of our national claims to the three-mile belt, and more recently to the whole continental shelf. For references to diplomatic correspondence making these assertions, see 1 Moore, International Law Digest (1906) 705, 706, 707; 1 Wharton, Digest of International Law (1886) 100. See also Hughes, *Recent Questions and Negotiations*, 18 A. J. I. L. 229 (1924).

The latest and broadest claim is President Truman's recent proclamation that the United States "regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. . . ." Exec. Proc. 2667, Sept. 28, 1945, 10 F. R. 12303.

See U. S. Treas. Reg. 2, § 2201 (1931), Reprinted in Research in International Law, supra, 250; 41 Stat. 305.

Not only has acquisition, as it were, of the three-mile belt, been accomplished by the national Government, but protection and control of it has been and is a function of national external sovereignty. See *Jones* v. *United States*, 137 U. S. 202; *In re Cooper*, 143 U. S. 472, 502. The belief that local interests are so predominant as constitutionally to require state dominion over lands under its land-locked navigable waters finds some argument for its support. But such can hardly be said in favor of state control over any part of the ocean or the ocean's bottom. This country, throughout its existence has stood for freedom of the seas, a principle whose breach has precipitated wars among nations. The country's adoption of the three-mile belt is by no means incompatible with its traditional insistence upon freedom of the sea, at least so long as the national Government's power to exercise control consistently with whatever international undertakings or commitments it may see fit to assume in the national interest is unencumbered. See *Hines* v. *Davidowitz*, 312 U. S. 52, 62-64; *McCulloch* v. *Maryland*, *supra*. The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars raged on or too near its coasts. And insofar as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it,[19] is a question for consideration among nations as such, and not their separate governmental units. What this Government does, or even what the states do, anywhere in

[19] See *Lord* v. *Steamship Co.*, 102 U. S. 541, 544.

the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations. See *United States* v. *Belmont*, 301 U. S. 324, 331–332. The very oil about which the state and nation here contend might well become the subject of international dispute and settlement.

The ocean, even its three-mile belt, is thus of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of the nation, rather than an individual state, so, if wars come, they must be fought by the nation. See *Chy Lung* v. *Freeman*, 92 U. S. 275, 279. The state is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks. Conceding that the state has been authorized to exercise local police power functions in the part of the marginal belt within its declared boundaries,[20] these do not detract from the Federal Government's paramount rights in and power over this area. Consequently, we are not persuaded to transplant the *Pollard* rule of ownership as an incident of state sovereignty in relation to inland waters out into the soil beneath the ocean, so much more a matter of national concern. If this rationale of the *Pollard* case is a valid basis for a conclusion that paramount rights run to the states in inland waters to the shoreward of the low water mark, the same rationale leads to the conclusion that national interests responsibilities, and therefore national rights are paramount in waters lying to the seaward in the three-mile belt. *Cf. United States* v. *Curtiss-Wright*

[20] See *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 404; *cf. The Abby Dodge*, 223 U. S. 166 with *Skiriotes* v. *Florida*, 313 U. S. 69, 74–75.

Corp., 299 U. S. 304, 316; *United States* v. *Causby*, 328 U. S. 256.

As previously stated this Court has followed and reasserted the basic doctrine of the *Pollard* case many times. And in doing so it has used language strong enough to indicate that the Court then believed that states not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not. All of these statements were, however, merely paraphrases or offshoots of the *Pollard* inland water rule, and were used, not as enunciation of a new ocean rule, but in explanation of the old inland water principle. Notwithstanding the fact that none of these cases either involved or decided the state-federal conflict presented here, we are urged to say that the language used and repeated in those cases forecloses the Government from the right to have this Court decide that question now that it is squarely presented for the first time.

There are three such cases whose language probably lend more weight to California's argument than any others. The first is *Manchester* v. *Massachusetts*, 139 U. S. 240. That case involved only the power of Massachusetts to regulate fishing. Moreover, the illegal fishing charged was in Buzzards Bay, found to be within Massachusetts territory, and no question whatever was raised or decided as to title or paramount rights in the open sea. And the Court specifically laid to one side any question as to the rights of the Federal Government to regulate fishing there. The second case, *Louisiana* v. *Mississippi*, 202 U. S. 1, 52, uses language about "the sway of the riparian states" over "maritime belts." That was a case involving the boundary between Louisiana and Mississippi. It did not involve any dispute between the federal and state governments. And the Court there specifically laid aside questions concerning "the breadth of the mari-

time belt or the extent of the sway of the riparian States . . ." *Id.* at 52. The third case is *The Abby Dodge*, 223 U. S. 166. That was an action against a ship landing sponges at a Florida port in violation of an Act of Congress, 34 Stat. 313, which made it unlawful to "land" sponges taken under certain conditions from the waters of the Gulf of Mexico. This Court construed the statute's prohibition as applying only to sponges outside the state's "territorial limits" in the Gulf. It thus narrowed the scope of the statute because of a belief that the United States was without power to regulate the Florida traffic in sponges obtained from within Florida's territorial limits, presumably the three-mile belt. But the opinion in that case was concerned with the state's power to regulate and conserve within its territorial waters, not with its exercise of the right to use and deplete resources which might be of national and international importance. And there was no argument there, nor did this Court decide, whether the Federal Government owned or had paramount rights in the soil under the Gulf waters. That this question remained undecided is evidenced by *Skiriotes* v. *Florida*, 313 U. S. 69, 75, where we had occasion to speak of Florida's power over sponge fishing in its territorial waters. Through Mr. Chief Justice Hughes we said: "It is also clear that Florida has an interest in the proper maintenance of the sponge fishery and that the [state] statute *so far as applied to conduct within the territorial waters of Florida, in the absence of conflicting federal legislation, is within the police power of the State.*" (Emphasis supplied.)

None of the foregoing cases, nor others which we have decided, are sufficient to require us to extend the *Pollard* inland water rule so as to declare that California owns or has paramount rights in or power over the three-mile belt under the ocean. The question of who owned the bed of the sea only became of great potential importance at the

beginning of this century when oil was discovered there.[21] As a consequence of this discovery, California passed an Act in 1921 authorizing the granting of permits to California residents to prospect for oil and gas on blocks of land off its coast under the ocean. Cal. Stats. 1921, c. 303. This state statute, and others which followed it, together with the leasing practices under them, have precipitated this extremely important controversy, and pointedly raised this state-federal conflict for the first time. Now that the question is here, we decide for the reasons we have stated that California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil.

Fourth. Nor can we agree with California that the federal Government's paramount rights have been lost by reason of the conduct of its agents. The state sets up such a defense, arguing that by this conduct the Government is barred from enforcing its rights by reason of principles similar to laches, estoppel, adverse possession. It would serve no useful purpose to recite the incidents in detail upon which the state relies for these defenses. Some of them are undoubtedly consistent with a belief on the part of some Government agents at the time that California owned all, or at least a part of the three-mile belt. This belief was indicated in the substantial number of instances in which the Government acquired title from the states to lands located in the belt; some decisions of the Department of Interior have denied applications for federal oil and gas leases in the California coastal belt on the ground that California owned the lands. Outside

[21] Bull. No. 321, Dept. of Interior, Geological Survey.

of court decisions following the *Pollard* rule, the foregoing are the types of conduct most nearly indicative of waiver upon which the state relies to show that the Government has lost its paramount rights in the belt. Assuming that Government agents could by conduct, short of a congressional surrender of title or interest, preclude the Government from asserting its legal rights, we cannot say it has done so here. As a matter of fact, the record plainly demonstrates that until the California oil issue began to be pressed in the thirties, neither the states nor the Government had reason to focus attention on the question of which of them owned or had paramount rights in or power over the three-mile belt. And even assuming that Government agencies have been negligent in failing to recognize or assert the claims of the Government at an earlier date, the great interests of the Government in this ocean area are not to be forfeited as a result. The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.[22]

We have not overlooked California's argument, buttressed by earnest briefs on behalf of other states, that improvements have been made along and near the shores at great expense to public and private agencies. And we note the Government's suggestion that the aggregate value of all these improvements are small in comparison with

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[22] *United States* v. *San Francisco*, 310 U. S. 16, 31–32; *Utah* v. *United States*, 284 U. S. 534, 545, 546; *Lee Wilson & Co.* v. *United States*, 245 U. S. 24, 32; *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 409. See also *Sec'y of State for India* v. *Chelikani Rama Rao, L. R.*, 43 Indian App. 192, 204 (1916).

the tremendous value of the entire three-mile belt here in controversy. But however this may be, we are faced with the issue as to whether state or nation has paramount rights in and power over this ocean belt, and that great national question is not dependent upon what expenses may have been incurred upon mistaken assumptions. Furthermore, we cannot know how many of these improvements are within and how many without the boundary of the marginal sea which can later be accurately defined. But beyond all this we cannot and do not assume that Congress, which has constitutional control over Government property, will execute its powers in such way as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission. See *United States* v. *Texas*, 162 U. S. 1, 89, 90; *Lee Wilson & Co.* v. *United States*, 245 U. S. 24, 32.

We hold that the United States is entitled to the relief prayed for. The parties, or either of them, may, before September 15, 1947, submit the form of decree to carry this opinion into effect, failing which the Court will prepare and enter an appropriate decree at the next term of Court.

It is so ordered.

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 12, ORIGINAL.—OCTOBER TERM, 1946.

United States of America, Plaintiff,
v.
State of California.
} Original.

[June 23, 1947.]

MR. JUSTICE REED, dissenting.

In my view the controversy brought before this Court by the complaint of the United States against California seeks a judgment between State and Nation as to the ownership of the land underlying the Pacific Ocean, seaward of the ordinary low water mark, on the coast of California and within the three-mile limit. The ownership of that land carries with it, it seems to me, the ownership of any minerals or other valuables in the soil, as well as the right to extract them.

The determination as to the ownership of the land in controversy turns for me on the fact as to ownership in the original thirteen states of similar lands prior to the formation of the Union. If the original states owned the bed of the sea, adjacent to their coasts, to the three-mile limit, then I think California has the same title or ownership to the lands adjacent to her coast. The original states were sovereignties in their own right, possessed of so much of the land underneath the adjacent seas as was generally recognized to be under their jurisdiction. The scope of their jurisdiction and the boundaries of their lands were coterminous. Any part of that territory which had not passed from their ownership by existing valid grants were and remained public lands of the respective states. California, as is customary, was admitted into the Union "on an equal footing with the original States in all respects whatever." 9 Stat. 452. By § 3 of the Act of Admission, the public lands within its borders were

reserved for disposition by the United States. "Public lands" was there used in its usual sense of lands subject to sale under general laws. As was the rule, title to lands under navigable waters vested in California as it had done in all other states. *Pollard* v. *Hagan*, 3 How. 212; *Barney* v. *Keokuk*, 94 U. S. 324, 338; *Shively* v. *Bowlby*, 152 U. S. 1, 49; *Mann* v. *Tacoma Land Co.*, 153 U. S. 273, 284; *Borax Consolidated, Ltd.* v. *Los Angeles*, 296 U. S. 10, 17.

The authorities cited in the Court's opinion lead me to the conclusion that the original states owned the lands under the seas to the three-mile limit. There were, of course, as is shown by the citations, variations in the claims of sovereignty, jurisdiction or ownership among the nations of the world. As early as 1793, Jefferson as Secretary of State in a communication to the British Minister said that the territorial protection of the United States would be extended "three geographical miles" and added:

> "This distance can admit of no opposition, as it is recognized by treaties between some of the powers with whom we are connected in commerce and navigation, and is as little, or less, than is claimed by any of them on their own coasts." H. Ex. Doc. No. 324, 42d Cong., 2d Sess., pp. 553–54.

If the original states did claim, as I think they did, sovereignty and ownership to the three-mile limit, California has the same rights in the lands bordering its littoral.

This ownership in California would not interfere in any way with the needs or rights of the United States in war or peace. The power of the United States is plenary over these undersea lands precisely as it is over every river, farm, mine, and factory of the nation. While no square ruling of this Court has determined the ownership of those marginal lands, to me the tone of the decisions

dealing with similar problems indicates that, without discussion, state ownership has been assumed. *Pollard* v. *Hagan, supra; Louisiana* v. *Mississippi*, 202 U. S. 1, 52; *The Abby Dodge*, 223 U. S. 166; *New Jersey* v. *Delaware*, 291 U. S. 361; 295 U. S. 694.

SUPREME COURT OF THE UNITED STATES

No. 12, ORIGINAL.—OCTOBER TERM, 1946.

United States of America, Plaintiff,
v.
State of California.
} Original.

[June 23, 1947.]

MR. JUSTICE FRANKFURTER, dissenting.

By this original bill, the United States prayed for a decree enjoining all persons, including those asserting a claim derived from the State of California, from trespassing upon the disputed area. An injunction against trespassers normally presupposes property rights. The Court, however, grants the prayer but does not do so by finding that the United States has proprietary interests in the area. To be sure it denies such proprietary rights in California. But even if we assume an absence of ownership or possessory interest on the part of California, that does not establish a proprietary interest in the United States. It is significant that the Court does not adopt the Government's elaborate argument, based on dubious and tenuous writings of publicists, that this part of the open sea belongs, in a proprietary sense, to the United States. See Schwarzenberger, Inductive Approach to International Law, 60 Harv. L. Rev. 539, 559. Instead, the Court finds trespass against the United States on the basis of what it calls the "national dominion" by the United States over this area.

To speak of "dominion" carries precisely those overtones in the law which relate to property and not to political authority. Dominion, from the Roman concept *dominium*, was concerned with property and ownership, as against *imperium*, which related to political sovereignty. One may choose to say, for example, that

See American Banana Co. v. United Fruit Co., 213 U.S. 347, 351.

the United States has "national dominion" over navigable streams. But the power to regulate commerce over these streams, and its continued exercise, do not change the *imperium* of the United States into *dominium* over the land below the waters. Of course the United States has "paramount rights" in the sea belt of California—the rights that are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here asserted—and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?

The fact that these oil deposits in the open sea may be vital to the national security, and important elements in the conduct of our foreign affairs, is no more relevant than is the existence of uranium deposits, wherever they may be, in determining questions of trespass to the land of which they form a part. This is not a situation where an exercise of national power is actively and presently interfered with. In such a case, the inherent power of a federal court of equity may be invoked to prevent or remove the obstruction. *In re Debs*, 158 U. S. 564; *Sanitary District* v. *United States*, 266 U. S. 405. Neither the bill, nor the opinion sustaining it, suggests that there is interference by California or the alleged trespassers with any authority which the Government presently seeks to exercise. It is beside the point to say that "if wars come, they must be fought by the nation." Nor is it relevant that "The very oil about which the state and nation here contend might well become the subject of international dispute and settlement." It is common knowledge that

uranium has become "the subject of international dispute" with a view to settlement. Compare *Missouri* v. *Holland*, 252 U. S. 416.

To declare that the Government has "national dominion" is merely a way of saying that *vis-a-vis* all other nations the Government is the sovereign. If that is what the Court's decree means, it needs no pronouncement by this Court to confer or declare such sovereignty. If it means more than that, it implies that the Government has some proprietary interest. That has not been remotely established except by sliding from absence of ownership by California to ownership by the United States.

Let us assume, for the present, that ownership by California cannot be proven. On a fair analysis of all the evidence bearing on ownership, then, this area is, I believe, to be deemed unclaimed land, and the determination to claim it on the part of the United States is a political decision not for this Court. The Constitution places vast authority for the conduct of foreign relations in the independent hands of the President. See *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304. It is noteworthy that the Court does not treat the President's proclamation in regard to the disputed area as an assertion of ownership. If California is found to have no title, and this area is regarded as unclaimed land, I have no doubt that the President and the Congress between them could make it part of the national domain and thereby bring it under Article IV, Section 3, of the Constitution. The disposition of the area, the rights to be created in it, the rights heretofore claimed in it through usage that might be respected though it fall short of prescription, all raise appropriate questions of policy, questions of accommodation, for the determination of which Congress and not this Court is the appropriate agency.

See Exec Proc 2667, (Sept 28, 1945), 10 F.R. 12,303.

Today this Court has decided that a new application even in the old field of torts should not be made by adjudication, where Congress has refrained from acting. *United States* v. *Standard Oil Co.*, 330 U. S. —. Considerations of judicial self-restraint would seem to me far more compelling where there are obviously at stake claims that involve so many far-reaching, complicated, historic interests, the proper adjustments of which are not readily resolved by the materials and methods to which this Court is confined.

This is a summary statement of views which it would serve no purpose to elaborate. I think that the bill should be dismissed without prejudice.

SUPREME COURT OF THE UNITED STATES

No. 12, ORIGINAL.—OCTOBER TERM, 1947.

United States of America, Plaintiff,
v.
State of California.
} Original.

ORDER AND DECREE.

[October 27, 1947.]

Since our opinion which was announced in this case June 23, 1947, two stipulations have been filed in this Court, signed by the Attorney General and Secretary of the Interior of the United States on the one hand and by the Attorney General of the State of California on the other hand. In these stipulations the Attorney General and the Secretary of the Interior purport to renounce and disclaim for the United States Government paramount governmental power over certain particularly described submerged lands in the California coastal area. In such stipulations the United States Attorney General and Secretary of the Interior furthermore purport to bind the United States to agreements which purport to authorize state lessees of California coastal submerged lands to continue to occupy and exploit those lands, and which agreements also purport to authorize California under conditions set out to execute leases for other submerged coastal lands.

Robert E. Lee Jordan has filed a petition in this Court praying that he be permitted to file a motion as *amicus curiae* or in the alternative as an intervenor to have the foregoing stipulations and agreements set aside and declared null and void on the ground among others that the Attorney General and the Secretary of the Interior are without authority to bind the United States by agreements which it is alleged would if valid alienate and surrender the Government's paramount power over the

submerged lands concerning which the stipulations are made.

It is ordered that the petition of Robert E. Lee Jordan to file the motion here to declare the stipulations null and void be denied, without prejudice to the assertion of any right he may have in a proper district court.

It is further ordered that the stipulations between the United States Attorney General and the Secretary of the Interior on the one hand and the Attorney General of California on the other, which stipulations purport to bind the United States, be stricken as irrelevant to any issues now before us.

And for the purpose of carrying into effect the conclusions of this Court as stated in its opinion announced June 23, 1947, it is ORDERED, ADJUDGED, AND DECREED as follows:

1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California. The State of California has no title thereto or property interest therein.

2. The United States is entitled to the injunctive relief prayed for in the complaint.

3. Jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree.

Inasmuch as the stipulations of July 26, 1947, have been stricken, MR. JUSTICE FRANKFURTER desires ex-

plicitly to note his understanding that insofar as the meaning or scope or validity of the stipulations may give rise to any legal issue, no such issue has been before the Court or has here been considered.

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.